

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

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COURT OF APPEALS, DISTRICT OF COLUMBIA

OCTOBER TERM, 1925

No. 4392

267

HUBERT WORK, SECRETARY OF THE INTERIOR, AND
WILLIAM SPRY, COMMISSIONER OF GENERAL LAND
OFFICE, APPELLANTS

vs.

CENTRAL PACIFIC RAILWAY COMPANY, A CORPORA-
TION

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF
COLUMBIA

FILED NOVEMBER 11, 1925

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INDEX

Caption	Original	Print
Bill of complaint	a	1
"Exhibit A"	1	1
"Exhibit B"	20	12
"Exhibit C"	26	15
"Exhibit D"	27	15
"Exhibit E"	28	16
"Exhibit F"	30	17
Rule to show cause	33	20
Marshal's return	33	20
Defendant's answer	34	20
Order amending answer	39	23
Stipulation of facts	41	24
"Exhibit G"	44	25
"Exhibit H"	56	34
Agreed statement as to exhibits	60	36
Opinion	63	37
Decree	70	40
Appeal noted by defendants	71	41
Assignment of errors	72	42
Designation of record	73	42
Additional designation of record	74	43
Clerk's certificate	76	43

a Supreme Court of the District of Columbia

CENTRAL PACIFIC RAILWAY COMPANY, A CORPORATION, plaintiff

vs.

HUBERT WORK, SECRETARY OF THE INTERIOR, AND
William Spry, Commissioner of General Land
Office, defendants

No. 41241 in Equity

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, that in the Supreme Court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:

1 *Bill of complaint*

Filed Apr. 28, 1923

In the Supreme Court of the District of Columbia, holding an equity court

CENTRAL PACIFIC RAILWAY COMPANY, A CORPORATION, plaintiff

vs.

HUBERT WORK, SECRETARY OF THE INTERIOR, AND
William Spry, Commissioner of General Land
Office, defendants

In Equity No. 41241

To the Supreme Court of the District of Columbia:

The plaintiff, Central Pacific Railway Company, respectfully represents:

I

That it is a body corporate, duly created, organized, and existing under and by virtue of the laws of the State of Utah; and brings this its bill of complaint against Hubert Work, a citizen of the State of Colorado, temporarily residing in the District of Columbia, and William Spry, a citizen of the State of Utah, temporarily residing in the District aforesaid, in respect to the matters and things hereinafter set forth.

II

2 That the defendant, Hubert Work, is Secretary of the Interior of the United States, and as such, has charge of the administration of the laws of the United States relating to the public lands, and the administration of all land grants made by Congress including any portion of said public lands; and that the defendant, William Spry, is Commissioner of the General Land Office of the United States, the latter being one of the branches of said Department

of the Interior, having immediate charge of the matter of the administration of the public lands of the United States, and of land grants made by Congress, said commissioner acting therein under the direction, supervision, and approval of the Secretary of the Interior; and that each said defendant is sued in his official capacity as such Secretary of the Interior and Commissioner of the General Land Office, respectively, as hereinafter set forth.

III

That by act of Congress approved July 1, 1862 (12 Stat. 489), entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes," and the further act, approved July 2, 1864 (13 Stat. 356), to amend said former act, the Central Pacific Railroad Company of California was authorized to construct a railroad and telegraph line from the Pacific Coast, at or near San Francisco, or the navigable waters of the Sacramento River, to the eastern boundary of California, upon the certain terms and conditions in said acts mentioned, and hereinafter more particularly referred to.

IV

3 By the third section of said act of July 1, 1862, a grant of lands was made to the above-named company, as follows:

"And be it further enacted, That there be, and is hereby, granted to the said company, for the purpose of aiding in the construction of said railroad and telegraph line and to secure the safe and speedy transportation of the mails, troops, munitions of war, and public stores thereon, every alternate section of public land, designated by odd numbers, to the amount of five alternate sections per mile on each side of said railroad on the line thereof, and within the limits of 10 miles on each side of said road, not sold, reserved, or otherwise disposed of by the United States, and to which a preemption or homestead claim may not have attached, at the time the line of said road is definitely fixed: Provided, That all mineral lands shall be excepted from the operation of this act; but where the same shall contain timber, the timber thereon is hereby granted to said company."

By the fourth section of said act it was thus provided, inter alia:

"And be it further enacted, That whenever said company shall have completed 40 consecutive miles of any portion of said railroad and telegraph line, ready for the service contemplated by this act, * * * the President of the United States shall appoint three commissioners to examine the same and report to him in relation thereto; and if it shall appear to him that forty consecutive miles of said railroad and telegraph line have been completed and equipped in all respects as required by this act, then, upon certificate of said commissioners to that effect, patents shall issue conveying the right and title to said lands to said company on each side of the road as far as the same is completed to the amount aforesaid; and patents shall in like manner issue as each 40 miles of said railroad and

telegraph line are completed upon certificate of said commissioners.
* * *

By the *sixth* section of said act it was provided:

“And be it further enacted, That the grants aforesaid are made upon condition that said company * * * shall at all times transmit despatches over said telegraph line and transport mails, troops, and munitions of war, supplies, and public stores upon said railroad for the Government whenever required to do so by any department thereof, and that the Government shall at all times have the preference in the use of the same for all the purposes aforesaid (at fair and reasonable rates of compensation, not to exceed the amounts paid by private parties for the same kind of service);”

By the ninth section of said act the company named was required to file in the Department of the Interior, within six months after the passage of said act, its acceptance of the conditions thereof.

By the tenth section of said act it was provided:

“and the said Central Pacific Railroad Company of California shall complete fifty miles of their said road within two years after filing their assent to the conditions of this act, as herein provided, and fifty miles per year thereafter until the whole is completed;”

By the fourth section of the act of July 2, 1864, *supra*, said act of July 1, 1862, was, among others, amended, as follows:

“And be it further enacted, That section three of said act be hereby amended by striking out the word ‘five,’ where the same occurs in said section, and by inserting in lieu thereof the word ‘ten,’ and by striking out the word ‘ten,’ where the same occurs in said section, and inserting in lieu thereof the word ‘twenty,’ * * * And the term ‘mineral land,’ wherever the same occurs in this act, and the act to which this is an amendment, shall not be construed to include coal and iron land.”

V

That said Central Pacific Railroad Company of California duly accepted the grant so made to it in and by the certain acts of Congress aforesaid, and duly filed its assent in that behalf; and, thereafter, duly constructed and completed a line of railroad beginning at a point on the east bank of the Sacramento River, at the city of Sacramento, California, and extending to Promontory, in the State of Utah; and the same was duly accepted by the President of the

United States, after sworn reports by the commissioners, as required by the granting acts aforesaid; and each, every, and all of the conditions, stipulations, and requirements of said land grant were and have been fully met and satisfied.

VI

By the terms of a certain joint resolution of Congress approved April 10, 1869 (16 Stat. 56), it was provided that the common terminus of the Union Pacific and said Central Pacific Railroads shall be at or near Ogden, and that said “Union Pacific Railroad Company shall build and the Central Pacific Railroad Company pay for

and own the railroad from the terminus aforesaid to Promontory Summit, at which point the rails shall meet and connect and form one continuous line."

VII

The plaintiff herein, Central Pacific Railway Company, to wit, in or about the year 1899, became by purchase the legal successor of all rights, titles, properties, and franchises of said Central Pacific Railroad Company of California, including the certain grant of lands so made to it as hereinabove stated; and thereafter, to wit, March 8, 1900, the then Secretary of the Department of the Interior of the United States directed the issuance of land patents in the name of plaintiff company on account of the land grant so made to said Central Pacific Railroad Company by the acts of Congress of July 1, 1862, and July 2, 1864, *supra* (29 L. D. 589), as aforesaid.

VIII

6 By the provisions of a certain other act of Congress approved March 3, 1887 (24 Stat. 556), the Secretary of the Interior was "authorized and directed to immediately adjust, in accordance with the decisions of the Supreme Court, each of the railroad land grants made by Congress to aid in the construction of railroads and heretofore unadjusted"; and although the fact is that the railroad of said Central Pacific Railroad Company of California, provided for in the granting acts of July 1, 1862, and July 2, 1864, *supra*, has long since been fully constructed, completed, equipped, and operated for more than half a century, with all of the incidental benefits to the United States, as fixed and provided by said granting acts, the land grant itself remains unadjusted.

IX

That the certain granting acts of July 1, 1862, and July 2, 1864, *supra*, constituted a contract between the United States and said Central Pacific Railroad Company; and, by constructing the said railroad and putting it in operation, the said railroad company performed its part of the contract, and thereby earned the right to the lands so granted to it as aforesaid. And plaintiff states that the only lands excepted from the certain land grant aforesaid are (1) those which, while within the limits of the grant, had been "sold, reserved, or otherwise disposed of by the United States"; (2) or "to which a preemption or homestead claim" had "attached at the time the line of said road is definitely fixed"; and (3) "mineral lands"—that term, however, not to be construed to include coal and iron land.

X

7 That the grant of lands herein aforesaid contained no provisions for indemnity; and, accordingly any tract or tracts lost to the grant by virtue of any or either of the several certain exceptions aforesaid constitute a loss for which no indemnity can be secured by said grantee or by this plaintiff as its successor in interest, as aforesaid.

XI

And plaintiff says that under the provisions of said granting acts of July 1, 1862, and July 2, 1864, supra, it filed, in the local United States land office at Elko, Nev., on or about September 27, 1915, its certain selection list No. 2 (now known as Elko Serial 02291) embracing therein, inter alia, all of section 5, T. 33 N., R. 41 E., M. D. M., Nevada; and which said selection list was accompanied by various certificates and by affidavit as required that the lands were vacant, unappropriated, and not interdicted mineral or reserved lands; and also paid the fees upon said selection list collectible by law, and otherwise met in every requirement the rules and regulations of the Department of the Interior in respect of making and filing such railroad selection list, and said selection was duly certified by the register and receiver of said local land office under date September 27, 1915.

Plaintiff attaches hereto and asks that the same be taken and considered as a part hereof, a true and correct copy of so much of the certain selection list aforesaid as embraces the tracts hereinabove particularly described, and also of the several certificates and affidavit thereto attached to said list, the same being marked "Exhibit A."

XII

And plaintiff further states that the above described land is an odd-numbered section within the limits of the grant so contained in the said acts of July 1, 1862, and July 2, 1864, supra; that, at the date of filing the certain selection list aforesaid in the local land office the lands hereinabove mentioned and described were shown to be vacant, unoccupied, unappropriated, nonmineral in character, and free and clear of and from the claim of any person whomsoever, and not embraced in any sale or reservation theretofore made either by the President of the United States, by Congress, or by any of the executive departments of the Government of the United States.

XIII

And plaintiff further states that, in accordance with the rules, regulations, and practice of the Department of the Interior, said local land office thereafter duly transmitted said certified selection list, along with the monthly returns from said local land office, to the Commissioner of the General Land Office for appropriate consideration and ultimate patenting of the lands embraced therein to plaintiff.

XIV

And plaintiff says that while the certain selection list aforesaid was so pending for appropriate action and disposition, but before any action was had thereon so far as concerns the certain lands aforesaid, the Commissioner of the General Land Office, under date, April 8, 1918, ordered what are termed "adverse proceedings"

against plaintiff as to the SW. $\frac{1}{4}$ of the above section 5, T. 33 N., R. 41 E., M. D. M., so embraced in the certain selection list aforesaid, such action being taken under a charge made by a special agent of the General Land Office that the lands in said section 5 are mineral in character, containing valuable deposits of manganese.

Plaintiff says further that the N. $\frac{1}{2}$ SE. $\frac{1}{4}$ of said sec. 5, containing 498.40 acres, were patented to this plaintiff an August 13, 1918, in Central Pacific Railway Company's patent No. 289.

Plaintiff further says that it is not contended by the defendants, or either of them, or by the United States or anyone in its behalf, or by any other person, that the title of plaintiff has failed by any reason whatsoever other than the fact as alleged, that said land is mineral in character.

XV

In connection with the certain proceedings aforesaid, the plaintiff filed appropriate answer and affidavit denying the mineral character of the NE. $\frac{1}{4}$ of the SW. $\frac{1}{4}$ and E. $\frac{1}{2}$ NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ of said sec. 5, and requested a hearing to determine the character of said tracts, but did not deny the charge or file application for hearing as to the S. $\frac{1}{2}$ SW. $\frac{1}{4}$ and W. $\frac{1}{2}$ NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ of said sec. 5.

Plaintiff further says that in his office letter, dated August 4, 1919, the defendant, the Commissioner of the General Land Office, states that, on March 22, 1919, a special agent of the office reported that, on May 16, 1918, the railway company filed its answer, denying the charges as to the NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ and E. $\frac{1}{2}$ NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ sec. 5 and admitting the mineral character of the remaining portion of the land in said SW. $\frac{1}{4}$ sec. 5; that he had again examined the NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ and E. $\frac{1}{2}$ NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ on which a hearing was

asked, and was unable to find any mineral showing on this portion of the land which would warrant proceeding to a hearing and that he recommended that the proceedings be vacated. The local officers at Elko were accordingly instructed that, if the railway company by its answer (then in the files of the local office) admitted the mineral character of the S. $\frac{1}{2}$ SW. $\frac{1}{4}$ and W. $\frac{1}{2}$ NW. $\frac{1}{4}$ SW. $\frac{1}{4}$, they should render judgment on that admission and enter a clear list as to the remainder. A true and correct copy of said office letter of August 4, 1919, is hereto attached, marked "Exhibit B," and is prayed to be read as a part hereof.

Plaintiff says further that under date of October 15, 1919, the register and receiver of the aforesaid local land office at Elko, Nevada, reported to the Commissioner of the General Land Office that they had clear listed said NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ and E. $\frac{1}{2}$ NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ of said sec. 5, and that judgment by default had been entered against the Central Pacific Railway Company as to the S. $\frac{1}{2}$ SW. $\frac{1}{4}$ and W. $\frac{1}{2}$ NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ of said section. A true copy of said report from the register and receiver is hereto attached, marked "Exhibit C," and is prayed to be read as a part hereof.

XVI

And plaintiff says that although the report aforesaid came into the hands of the defendant, the Commissioner of the General Land Office, a short time after the date thereof, he failed to take any action thereon, by way of clear listing the said NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ and E. $\frac{1}{2}$ NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ sec. 5, and issuing patent therefor as lands of admitted nonmineral character, as by right he should have done, but permitted said report to remain in the files of his office until July 10, 1922, when, in his office decision of that date, he proceeded to hold the entire NW. $\frac{1}{4}$ of the SW. $\frac{1}{4}$ of said sec. 5 for cancellation, upon the alleged authority of a certain decision of the Department of the Interior, dated March 14, 1922, and, ignoring the plaintiff's denial of the mineral character of the E. $\frac{1}{2}$ NW. $\frac{1}{4}$ SW. $\frac{1}{4}$, ignoring the report of a special agent of his office that he was unable to find any mineral showing on that tract of land which would warrant proceeding to a hearing, and ignoring his direction that said tract should be clear listed as to mineral, he held that the railway company's failure to answer or to apply for a hearing as to the W. $\frac{1}{2}$ NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ must run against the entire legal subdivision or the NW. $\frac{1}{4}$ of the SW. $\frac{1}{4}$ of said sec. 5. True and correct copies of the said office decision of July 10, 1922, and of the said departmental decision of March 14, 1922, are hereto attached, marked "Exhibits D and E," respectively, and are prayed to be read as parts hereof.

XVII

From the above decision of the Commissioner of the General Land Office, dated July 10, 1922, plaintiff prosecuted an appeal to the Secretary of the Interior, party defendant herein, the same resulting in a decision, bearing date March 8, 1923, affirming the decision so appealed from; a true and correct copy of said decision being here set forth as follows:

"DEPARTMENT OF THE INTERIOR,
Washington, March 8, 1923.

A-3740

UNITED STATES	{ "FS" Elko 02291 List held for cancellation Affirmed
v.	
CENTRAL PACIFIC RAILWAY COMPANY	

Appeal from the General Land Office

12 On April 9, 1916, adverse proceedings were directed against the Central Pacific Railway Company's list No. 2, now serialized as Elko 02291, embracing the SW. $\frac{1}{4}$ sec. 5, T. 33 N., R. 41 E., M. D. M., within the place limits of the grant under which it asserted title, on the charge preferred by a special agent that all that tract was mineral in character, and did not for that reason pass under that grant.

After the company had asserted in its answer that the NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ and E. $\frac{1}{2}$ NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ were not mineral in character, and after a subsequent special agent's report had conceded the truth of that answer and recommended the clear listing of these last-named tracts, the General Land Office, by its decision of August 4, 1919, directed the list to be clear listed as to those tracts; but in that decision the list was held for cancellation as to the W. $\frac{1}{2}$ NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ and the S. $\frac{1}{2}$ SW. $\frac{1}{4}$ on the ground that the company had conceded that the lands embraced therein did not pass under the grant by its failure to deny the charge that they were mineral in character.

Pursuant to that direction the register and receiver noted the clear listing of the NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ and E. $\frac{1}{2}$ NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ on October 15, 1919, but by its later decision of July 10, 1922, and before any further action looking to the patenting of the clear listed tracts had been taken, the General Land Office held the list for cancellation as to the E. $\frac{1}{2}$ NW. $\frac{1}{4}$ SW. $\frac{1}{4}$, as well as to the S. $\frac{1}{2}$ SW. $\frac{1}{4}$ and W. $\frac{1}{2}$ NW. $\frac{1}{4}$ SW. $\frac{1}{4}$, and the question as to the correctness of that action in so far as it related to the E. $\frac{1}{2}$ NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ is now up for consideration on the company's appeal from the commissioner's decision.

That action was based on this department's unpublished decision of March 14, 1922, in the closely kindred case of *United States v. Central Pacific Railway Company* wherein it was held: (1) That a list of the kind here involved can not be permitted to include a "tract smaller than a subdivision (40 acres); or a lot if a subdivision, or the residue of one, that has been officially lotted"; and (2) that in cases such as this one the failure of the company to deny that every part of a legal subdivision is mineral in character is tantamount to a confession that the entire subdivision is of that character.

In its appeal the company urges, in effect, (1) that the commissioner did not have the power to hold the list for cancellation as to the E. $\frac{1}{2}$ NW. $\frac{1}{4}$ SW. $\frac{1}{4}$, for the reason that the decision of the register and receiver in clear listing it had become final long before his last decision holding the list for cancellation was rendered; (2) that the commissioner erred in holding that its list must be
 13 rejected as to the entire NW. $\frac{1}{4}$ SW. $\frac{1}{4}$, because it failed to allege that the west half of it was not mineral in character, and (3) also, in holding that the nonmineral part of a minor legal subdivision can not be listed and patented to it because the remainder of the subdivision is not of that character. None of these contentions can be sustained.

While it is a general rule that after a decision of the General Land Office has become final it will not be later revoked and set aside in cases where the rights of adverse parties are involved, there is nothing in the Rules of Practice or elsewhere that will prevent the commissioner of that office from ignoring or vacating an erroneous decision of his office in ex parte matters in the interests of the Government for the purpose of preventing the issuance of a patent that could not be legally issued.

The last two contentions are based mainly on the appellant's contention that its title to the E. $\frac{1}{2}$ NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ vested on the filing

of its map of definite location in 1867, and that therefore it is entitled to a patent to that tract, notwithstanding the fact that the west half of that forty acre subdivision is mineral in character. This theory is in fatal conflict with the long-established rule that parts of minor legal subdivisions of sections can not be entered or otherwise appropriated to the exclusion of other parts thereof, except in cases where such a course is authorized by specific statutory direction, or necessary in the execution of particular laws, as is the case in statutes providing for the disposal of lands under the placer mining laws. (Sec. 3231, Revised Statutes.) And no such exception has ever been extended to the patenting of lands under railroad grants. This department has never sanctioned the patenting of areas less than minor subdivisions under such grants except in cases where existing placer mining locations covered fractional parts of such subdivisions.

In the present case there are no such locations affecting the NW. $\frac{1}{4}$ SW. $\frac{1}{4}$, and it necessarily follows that the east half of it can not be patented to this company.

The decision appealed from is hereby affirmed.

(Signed) E. C. FINNEY,
First Assistant Secretary.

XVIII

Plaintiff thereafter, and within the time therefor limited, filed its motion for rehearing of said departmental decision, but the
14 same was thereafter denied under date of April 23, 1923, by the defendant, the Secretary of the Interior, and the record in said case was returned, or is about to be returned, to the defendant, the Commissioner of the General Land Office, for the purpose of making final the aforesaid decision adverse to the plaintiff company, or finally rejecting plaintiff's selection of the E. $\frac{1}{2}$ NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ sec. 5, aforesaid, and of closing the case.

XIX

And plaintiff says that it has now completely exhausted the rights of appeal and rehearing in said Department of the Interior and in said General Land Office in respect of its claim to the aforesaid tract of land, and that no further opportunity for hearing or review of the question aforesaid, or for the further assertion therein of its claim to said tract of land, is afforded by the regulations and rules of practice of said department, or by any law or act of Congress in such case made and provided; and that its only remaining remedy is by appropriate appeal to the courts for relief from the rulings aforesaid, and which rulings, as plaintiff is advised by counsel and accordingly, so avers, are erroneous in matter of law.

XX

Plaintiff further says that the long-established rule of departmental practice has not been, as stated in the aforesaid departmental decision of March 8, 1923, that parts of minor legal subdivisions of sections can not be entered or otherwise appropriated to the exclusion

of the other parts thereof, except in cases where such a course is authorized by specific statutory direction, or necessary in the execution of particular laws, as is the case in statutes providing for the disposal of lands under the placer mining laws; and that no such exception has ever been extended to the patenting of lands under railroad grants, or that the Department of the Interior has never sanctioned the patenting of areas less than minor subdivisions, under such grants except in cases where existing placer mining locations covered fractional parts of such subdivisions. On the contrary, plaintiff asserts the fact to be that in a number of instances the Department of the Interior has approved clear lists of lands which were thereupon patented to railroad companies under the grants hereinbefore referred to and similar grants, containing tracts less than a so-called legal subdivision or forty acres in area, where the fractional character was not due to existing placer mining locations. And plaintiff says that the long established practice in the Land Department permitting the so-called splitting of forty-acre tracts in the patenting of railroad selections, has become a rule of property as well as a settled rule of departmental practice, until the same was departed from in the decision of March 14, 1922, supra.

XXI

And plaintiff says further that while a duly accredited representative of the aforesaid General Land Office, to wit, a special agent thereof reported that he was unable to find any mineral showing on the E. $\frac{1}{2}$ NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ said sec. 5 which would warrant proceeding to a hearing, and that he recommended the proceedings as to said tract be vacated, and while the defendant, the Commissioner of the General Land Office, concurred in that report and directed that the plaintiff's Elko list No. 2 aforesaid be clear listed as to said E. $\frac{1}{2}$ NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ of said sec. 5, yet the defendants, by their certain decisions aforesaid, have undertaken to deprive plaintiff of its right in the land so granted to it, as aforesaid, not because the said tract is really mineral in character, but simply and only because the plaintiff has admitted that an adjoining tract, containing twenty acres, a part of the same so-called legal subdivision, is mineral.

XXII

And plaintiff says further that the ultimate facts found by the Department of the Interior, as appears from the decisions hereinabove set out, show that said land is in fact nonmineral in character, and plaintiff says further that, as also appears from said decisions, the conclusion that said land, to wit, the E. $\frac{1}{2}$ NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ sec. 5, is mineral in character, is based solely upon the erroneous ruling that the failure of a railway company to deny that every part of a legal subdivision is mineral in character is tantamount to a confession that the entire subdivision is of that character.

XXIII

Plaintiff further states that by full construction of the railroad provided for by the certain granting acts hereinabove mentioned,

and otherwise full compliance with the terms, conditions, and exactions thereof, the right and title to the lands embraced in this suit, to wit, the E. $\frac{1}{2}$ NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ sec. 5, T. 33 N., R. 41 E., M. D. M., Nevada, has been fully earned; but that, nevertheless, the
17 right of the plaintiff in the premises is sought to be defeated by the unauthorized and arbitrary action of defendants, as hereinaforesaid.

XXIV

And plaintiff further states that if the certain action hereinabove set forth be permitted to stand it will deprive plaintiff of a valuable part of the land grant so heretofore made by Congress, as aforesaid, and for which the United States received valuable consideration; will be in violation of the statutory contract accomplished and effected by said granting acts of July 1, 1862, and July 2, 1864, supra; will limit and, to the extent of the tract of land described, will defeat the will of Congress as expressed in said grant, and this, too, after the said grantee has performed, in full, the several conditions in consideration whereof the grant was made; and will further result in the unlawful taking of the private property of this plaintiff for the public use without compensation, and without the consent of plaintiff, and to its irreparable loss, damage, and injury, and for which plaintiff has no adequate remedy at law, and is otherwise remediless except in equity.

Wherefore, the premises considered, the plaintiff prays:

1. That the process of this court may issue directed to the defendants, Hubert Work, Secretary of the Interior, and William Spry, Commissioner of the General Land Office, requiring them and each of them to appear and make answer to the foregoing bill of complaint.

18 2. That, upon the filing of this bill, or at such day thereafter as shall be fixed by the court, a preliminary order may issue herein restraining and enjoining, pendente lite, the defendants, their successors in office, and each, every, and all persons claiming to act under their or either of their authority or control, from enforcing any or either of the certain rulings, holdings, and decisions mentioned and complained of in the foregoing bill of complaint, or from canceling or rejecting the certain selection so heretofore made by plaintiff of the E. $\frac{1}{2}$ NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ sec. 5, T. 33 N., R. 41 E., M. D. M., Nevada.

3. That, upon final hearing, said restraining order and injunction may be made perpetual, and that mandatory injunction may issue against said defendants, commanding and requiring that each of the certain rulings, holdings, and decisions aforesaid be vacated and set aside, and that the right granted and secured to plaintiff under the certain granting acts herein aforesaid be recognized, respected, and given their full legal force and effect, excluding from any and all consideration and application, both now and hereafter, in connection with plaintiff's selection of the tract aforesaid, the ruling and practice heretofore adopted by the defendants of declining to permit the plaintiff to deny the mineral character of a part of a so-called legal subdivision of land within its land grant, while

admitting the mineral character of the remaining part of such subdivision.

4. And that plaintiff may have all such other and further relief as the nature of its case may demand and require, and as may be agreeable to equity.

CENTRAL PACIFIC RAILWAY COMPANY,
By C. F. R. OGILBY, *Attorney.*

C. F. R. OGILBY,
Attorney for Plaintiff.

- 19 The defendants to this bill of complaint are:
1. Hubert Work, Secretary of the Interior.
 2. William Spry, Commissioner of the General Land Office.

DISTRICT OF COLUMBIA, ss:

Before me, the undersigned, a notary public in and for the District aforesaid, personally appeared C. F. R. Ogilby, who, being by me first duly sworn, on oath, says: That he is attorney for the Central Pacific Railway Company, a corporation duly created, organized, and existing under the laws of the State of Utah, and having its principal office and place of business in the city of San Francisco, in the State of California, said corporation being the plaintiff named in the foregoing and annexed bill of complaint, and that he makes this affidavit on behalf of said corporation, being thereunto duly authorized, because of the fact that said corporation is not resident in the District of Columbia, and none of its officers are in said District; that he has read the foregoing bill of complaint, and that he is acquainted with the contents thereof, and that the several matters and things therein set forth and contained are true, as he verily believes.

C. F. R. OGILBY.

Subscribed and sworn to before me, this 28th day of April, 1923.

[SEAL.]

JEAN SPEAKS,
Notary Public, D. C.

20

02291

"Exhibit A"

United States Land Office, Elko, Nevada

List No. 2. Lands selected by the Central Pacific Railway Company, successor to the Central Pacific Railroad Co. of California

OFFICE OF THE CENTRAL PACIFIC RAILWAY COMPANY,
San Francisco, California, September 7th, 1915.

21 I, G. L. King, secretary of the Central Pacific Railway Company (successor to "The Central Pacific Railroad Company of California" and "The California and Oregon Railroad Company"), hereby certify that B. A. McAllaster was appointed land commissioner of the said Central Pacific Railway Company by

the board of directors of said company at a meeting held on the twenty-sixth day of September, 1908, which appointment was made effective from the twenty-first day of September, 1908, and that since that time he has been continuously, and is now, the land commissioner of the said company.

In testimony whereof I have hereunto set my hand and affixed the corporate seal of the said company this 7th day of September, 1915.

[SEAL.]

G. L. KING,

Secretary of the Central Pacific Railway Company.

22 List of lands in the Elko Land District, Nevada, selected by the Central Pacific Railway Company, successor to the Central Pacific Railroad Company of California.

The undersigned, the duly authorized land commissioner of the Central Pacific Railway Company, successor to "The Central Pacific Railroad Company of California," under and by virtue of the act of Congress entitled "An act granting lands to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean," approved July 1, 1862, and the act amendatory thereof, approved July 2, 1864, and under and in pursuance of the rules and regulations prescribed by the Commissioner of the General Land Office, hereby makes and files the following list of selections of public lands claimed by the said Central Pacific Railway Company, successor to "The Central Pacific Railroad Company of California," as inuring to it, and to which it is entitled, under and by virtue of the said act of Congress and the act amendatory thereof, and in virtue of the location of the line of route of the said railroad.

B. A. McALLASTER.

Land Commissioner of Central Pacific Railway Company.

23 RAILROAD LIST, NORTH OF BASE LINE AND EAST OF MOUNT DIABLO PRINCIPAL MERIDIAN

[illegible]

24 STATE OF CALIFORNIA,
 City and County of San Francisco, ss:

B. A. McALLASTER, being duly sworn, deposes and says: I am the land commissioner of the Central Pacific Railway Company. The foregoing list of lands, which I hereby select, is a correct list of a portion of the public lands claimed by the said Central Pacific Railway Company, successor to the Central Pacific Railroad Company of California, under and by virtue of an act of Congress entitled "An act granting land to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean," approved July 1, 1862, and the act amendatory thereof, approved July 2, 1864. The said lands are vacant, unappropriated, and not interdicted mineral nor reserved lands, and are of the character contemplated by the granting act, lying within the limits of 20 miles on each side of the line of route of the said railroad.

B. A. McALLASTER.

Subscribed and sworn to before me this seventh day of September, 1915.

[NOTARIAL SEAL.]

HUGH T. SIME,
*Notary Public in and for the City and County
of San Francisco, State of California.*

25

UNITED STATES LAND OFFICE,
Elko, Nev., Sep. 27, 1915.

We hereby certify that we have carefully and critically examined the foregoing list of lands claimed by the Central Pacific Railway Company (successor to the Central Pacific Railroad Company of California and the California & Oregon Railroad Company) and selected by B. A. McAllaster, the duly authorized land commissioner of the said company, and have tested the accuracy of the same by the plats and records of this office, and that we find the same to be correct.

We further certify that the lands described are surveyed, lie within the limits of 20 miles on each side of the line of route of said railroad, and that no part of the same is returned or denominated as mineral land, claimed as swamp land, or covered by any homestead, preemption, State, or other valid claim on file or of record in this office.

We further certify that said land commissioner has paid to the undersigned, the receiver, the sum of two hundred and ten and 00/100 (\$210.00) dollars, in full payment and discharge of fees of register and receiver on said list, and that the said list has been filed and approved.

JOHN E. ROBBINS, *Register.*
ASHLEY G. DAWLEY, *Receiver.*

26

"Exhibit B"

Elko 02291 "FS" BHG.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, Aug. 4, 1919.

UNITED STATES
vs.
CENTRAL PACIFIC RAILWAY COMPANY

Involving selection, List
No. 2, serial 02291, for
SW. $\frac{1}{4}$ sec. 5, T. 33 N.,
R. 41 E., M. D. M., Ne-
vada, relative to mineral
charges

REGISTER AND RECEIVER,
Elko, Nevada.

SIRS: By letter "FS" of April 9, 1918, adverse proceedings were initiated against the above-described railroad selection on the ground that the land is mineral in character, containing valuable deposits of manganese.

March 22, 1919, a special agent of this office reported that on May 16, 1918, the railway company filed answer denying the charge as to the NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ and E. $\frac{1}{2}$ NW. $\frac{1}{4}$ SW. $\frac{1}{4}$, sec. 5, and admitting the mineral character of the remaining portion of the land embraced in the SW. $\frac{1}{4}$ sec. 5. The agent states that he again examined the NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ and E. $\frac{1}{2}$ NW. $\frac{1}{4}$ SW. $\frac{1}{4}$, on which hearing was asked and was unable to find any mineral showing on this portion of the land that would warrant proceeding to a hearing. It was recommended that the proceedings against the NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ and E. $\frac{1}{2}$ NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ sec. 5 be vacated.

If the railway company by its answer admitted the mineral character of the S. $\frac{1}{2}$ and W. $\frac{1}{2}$ NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ sec. 5, you will render judgment on that admission, and enter a clear list as to the remainder of the lands.

Very respectfully,

CLAY TALLMAN,
Commissioner.

27

"Exhibit C"

Elko 02991. Contest 184. FS BHG.
Judgment.
FRB.

DEPARTMENT OF THE INTERIOR,
UNITED STATES LAND OFFICE,
Elko, Nevada, October 15, 1919.

FS.

THE COMMISSIONER OF THE GENERAL LAND OFFICE,
Washington, D. C.

SIR: Your above letter dated August 4, 1919, directed this office to render judgment as to the S. $\frac{1}{2}$; and W. $\frac{1}{2}$ NW. $\frac{1}{4}$ SW $\frac{1}{4}$ of sec. 5, T. 33 N., R 41 E., if the Central Pacific Railway Company

by its answer to charges preferred by your letter "FS" of Apr. 9, 1918, had admitted the mineral character thereof; and to enter a clear list as to the NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ and E. $\frac{1}{2}$ NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ of said section.

We have to report in reply that as the railway company had failed to deny the charges as affecting the S. $\frac{1}{2}$ and W. $\frac{1}{2}$ NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ of the section aforesaid, a tacit admission of the charges may be inferred, and judgment has this day been entered thereon.

Selection list 2, serial 02291, has been clear listed as to the NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ and E. $\frac{1}{2}$ NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ of sec. 5, T. 33 N., R 41 E., M. D. M

Very respectfully,

JOHN E. ROBBINS,
Register.

Recd. Oct. 24, 1919, G. L. O.

28

"*Exhibit D*"

Elko 02291 "FS" BHG

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, July 10, 1922.

Selection held for cancellation

REGISTER AND RECEIVER,
Elko, Nevada.

SIRS: By office letter of April 8, 1918, adverse proceedings were directed against selection list No. 2, serial 02291, of the Central Pacific Railway Company, for the SW. $\frac{1}{4}$ sec. 5, T. 33 N., R. 41 E., M. D. M., on the charge that the land is mineral in character. The railway company filed answer denying the charge as to the NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ and E. $\frac{1}{2}$ NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ sec. 5, but did not deny the charge or file application for hearing as to the S. $\frac{1}{2}$ SW. $\frac{1}{4}$ and W. $\frac{1}{2}$ NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ sec. 5, thus admitting the truth of the charge as to the mineral character thereof.

By office letter of August 4, 1919, you were directed if the railway company by its answer admitted the mineral character of the S. $\frac{1}{2}$ SW. $\frac{1}{4}$ and W. $\frac{1}{2}$ NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ sec. 5, to render judgment on that admission and to enter a clear list as to the remainder of the land.

October 15, 1919, you reported that the list had been clear listed as to the NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ and E. $\frac{1}{2}$ NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ sec. 5, and that judgment by default had been entered against the S. $\frac{1}{2}$ SW. $\frac{1}{4}$ and W. $\frac{1}{2}$ NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ sec. 5.

On May 26, 1922, you transmitted all papers in the case stating that no action having been taken you closed the case on your records.

With regards to the E. $\frac{1}{2}$ NW. $\frac{1}{4}$ SW. $\frac{1}{4}$, the proceedings against which were dismissed, and the W. $\frac{1}{2}$ NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ sec. 5, on which the railway company did not file answer or apply for a hearing, thereby admitting the mineral character thereof, attention is called

to departmental decision of March 14, 1922, in the case of United States vs. Central Pacific Railway Company, wherein it is held that—

“A selection list can specify no tract smaller than a subdivision (40 acres) or a lot if a subdivision, or a residue of one, has been officially lotted. Those are the units. And by the same rule of public land practice, if a charge is made against a selected tract as mineral land, it runs against such a unit, and answer to the charge must deny mineral character of that unit in toto, or it raises no issue. A railroad selector has never been allowed to pick out part of such a unit, alleging and proving that it is nonmineral, and thus retain it, while admitting that the rest of that unit includes ground mineral in character. To do that would be to allow the selector to divide a subdivision into lots unofficially, to suit his own notions and interests.

The Central Pacific Railway Company having failed to file answer or to apply for a hearing as to the W. $\frac{1}{2}$ NW. $\frac{1}{4}$ SW. $\frac{1}{4}$, in accordance with the above decision the default must run against the entire legal subdivision or the NW. $\frac{1}{4}$ SW. $\frac{1}{4}$. Accordingly, office decision of August 4, 1919, in so far as it relates to the clear listing of the E. $\frac{1}{2}$ NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ sec. 5, is hereby vacated and the default as to failure to make answer or to apply for a hearing is held to apply to the entire NW. $\frac{1}{4}$ SW. $\frac{1}{4}$. You will notify the railway company hereof and that if no action is taken or appeal filed within thirty days from service of notice said selection 02291, hereby held for cancellation, will be canceled as to the S. $\frac{1}{2}$ SW. $\frac{1}{4}$ and NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ sec. 5, T. 33 N., R. 41 E., because of default to answer the charges as to the mineral character of the land or to apply for a hearing. Resident counsel have been advised hereof.

Very respectfully,

GEO. R. WICKHAM,
Acting Commissioner.

6-12 MD.

30

“*Exhibit E*”

A-2178

DEPARTMENT OF THE INTERIOR,
Washington, March 14, 1922.

UNITED STATES OF AMERICA,
 contestant,
 vs.
CENTRAL PACIFIC RAILWAY
 Co., contestee

“N”

Carson City, Selection List No. 40
Selection canceled
Modified and remanded

Appeal from the General Land Office

This is an appeal by the Central Pacific Railway Company from the decision of the Commissioner of the General Land Office of September 22, 1921, holding for cancellation its selection list No. 40 to the extent of the N. $\frac{1}{2}$ SW. $\frac{1}{4}$ sec. 27, T. 33 N., R. 33 E., M. D. M., in the Carson City, Nevada, land district.

On March 26, 1869, patent had issued for the fifty-six lode claim, its side lines running from points in the NE. $\frac{1}{4}$ SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ of said section 27, southwesterly through said subdivision, across the NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ and into the NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ to points in the SE. $\frac{1}{4}$ of said last-mentioned subdivision. An amended plat showing lottings in said section 27 because of this patented mining claim was certified by the Surveyor General August 4, 1903, and filed in the General Land Office shortly thereafter. Upon this plat the residue of said SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ is shown as lot 1 (33.60 acres) the residue of said NE. $\frac{1}{4}$ NW. $\frac{1}{4}$ as lots 3 (0.90 acre) and 4 (35.72 acres), and the residue of said NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ as lot 2 (36 acres).

Said railway company filed, August 22, 1895 (prior, it should be noted, to the filing of said amended plat), its selection list No. 15, embracing W. $\frac{1}{2}$ NW. $\frac{1}{4}$ and S. $\frac{1}{2}$ of said section; and after the filing of said amended plat it filed, November 23, 1905, its selection list No. 40, embracing NE. $\frac{1}{4}$ NE. $\frac{1}{4}$ NW. $\frac{1}{4}$, and lot 1 (fractional SE. $\frac{1}{4}$ NW. $\frac{1}{4}$) of said section.

On November 22, 1917, the General Land Office directed that a charge be made against NE. $\frac{1}{4}$ NW. $\frac{1}{4}$ and N. $\frac{1}{2}$ SW. $\frac{1}{4}$ sec. 27, of the lands described by said list No. 40; although said last-described tract was not included in said list No. 40, but it had been included in said list No. 15, filed ten years earlier. Accordingly, December 7,

1917, a charge was filed and served.

31 "That the land is mineral in character, containing valuable deposits of gold, silver, lead, and copper."

On July 13, 1916, the selector filed its answer, alleging—

"That the NE. $\frac{1}{4}$ of the NW. $\frac{1}{4}$ W. $\frac{1}{2}$ of NW. $\frac{1}{4}$ of SW. $\frac{1}{4}$, E. $\frac{1}{2}$ of NE. $\frac{1}{4}$ of SW. $\frac{1}{4}$, all sec. 27, is not, nor any portion of said tracts, mineral land,"

and asking for a hearing on the issue so joined; but not joining issue with said charge as to E. $\frac{1}{2}$ NW. $\frac{1}{4}$ SW. $\frac{1}{4}$, or W. $\frac{1}{2}$ NE. $\frac{1}{4}$ SW. $\frac{1}{4}$, of said section 27.

Hearing was set down before a commissioner for May 24, 1920, and was held on that day at Lovelock, Nevada, counsel for the representative parties attending. The Government counsel stated that contestee having, by its answer, admitted the mineral character of said E. $\frac{1}{2}$ NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ and W. $\frac{1}{2}$ NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ had under the departmental rulings admitted the mineral character of (each) entire 40 acres—claiming that under departmental rulings the selector must stand or fall on a full 40-acre tract, as no subsequent survey had been applied for on the land that is traversed by the patented lode mining claim known as Fifty-Six Lode. Said counsel offered in evidence a map of the subdivision, showing the location of said patented mining claim; and then rested. Counsel for said contestee also called attention to the situation of said claim, and then rested without offering evidence. No additional evidence was offered at the final hearing, June 24, 1920, before the register and receiver.

On December 3, 1920, the register and receiver rendered their joint decision, holding that no evidence being offered to prove that the land in question is valuable for other than mineral purpose, and

a portion being admitted to be mineral land, they must decide in favor of the Government, and recommending that the selection involved in the controversy be canceled. The contestee appealed to the commissioner.

It will be noted that when the commissioner directed proceedings against said selection as to said N. $\frac{1}{2}$ SW. $\frac{1}{4}$ apparently neither his office nor the selector's agent in its answer took account of the fact that the residues of said forties cut by said patented mining claim had been officially designated as lots, a plat of resurvey thereof having been filed in the General Land Office in 1903. And as the commissioner's decision points out—

"The NE. $\frac{1}{4}$ NW. $\frac{1}{4}$ seems to have been lost sight of entirely in your notice of the hearing and at the hearing."

Therefore, the tract last mentioned is eliminated from this case.

32 Also the charge directed was preferred against said N. $\frac{1}{2}$ SW. $\frac{1}{4}$ as land included in said selection list No. 40, while it was not included therein but had been included in said selection list No. 15, filed ten years previously and against which no charge as to said land had been directed or made.

In this confused state of the charge and of the issue joined it is plain that justice can be done to the selector only by allowing amendment both of the charge and of the answer thereto. The commissioner's decision was clearly right on the answer to the charge as it stood (ignoring the fact that the charge runs against list No. 40 instead of against list No. 15, as it should have done).

For a selection list can specify no tract smaller than a subdivision (40 acres), or a lot if a subdivision, or a residue of one, has been officially lotted. These are the units, and by the same rule of public land practice if a charge is made against a selected tract as mineral ground it runs against such a unit, and answer to the charge must deny mineral character of that unit in toto or it raises no issue. A railroad selector has never been allowed to pick out part of such a unit, alleging and proving that it is nonmineral and thus retain it, while admitting that the rest of that unit includes ground mineral in character. To do that would be to allow the selector to divide a subdivision into lots unofficially to suit his own notions and interests. See *James H. Harte* (33 L. D. 53) and *Roman Placer Mining Claim* (34 L. D. 260).

But in order to arrive at a just and regular disposal of this controversy the case is remanded to the General Land Office with directions to regularize the charge by directing it against said N. $\frac{1}{2}$ SW. $\frac{1}{4}$ as included in selection list No. 15 of said Central Pacific Railroad Company, and to permit said selector to answer anew to the amended charge. In such new answer it may, if the facts warrant, deny the asserted mineral character of the whole of said lot 2 or lot 3 or lot 4, or of any or all thereof. There should then be a new hearing, if called for by the new issue joined. And meanwhile said decision under appeal is vacated.

(Signed) E. C. FINNEY,
First Assistant Secretary.

Rule to show cause

Filed Apr. 28, 1923

In the Supreme Court of the District of Columbia

Holding an Equity Court

CENTRAL PACIFIC RAILWAY COMPANY, A CORPORATION, plaintiff

*vs.*HUBERT WORK, SECRETARY OF THE INTERIOR,
William Spry, Commissioner of the General Land Office, defendants

In Equity No. 41241

Upon consideration of the bill of complaint herein and upon application in that behalf made it is by the court, this 28th day of April, 1923, ordered:

That Hubert Work, Secretary of the Interior, and William Spry, Commissioner of the General Land Office, defendants, show cause to this court, if any they have, on Friday, the 11th day of May, 1923, at ten o'clock a. m., why preliminary injunction or restraining order should not issue as prayed in said bill of complaint; provided, a copy of said bill and of this rule to show cause be served upon said defendants, respectively, on or before the 2d day of May, 1923.

F. L. SIDDONS,

*Justice.**Marshal's return*

Served a copy of the within rule on Hubert Work, Secty. of Interior, & Wm. Spry, Com. of Gen. Land Office, each personally, April 30, 1923.

E. C. SNYDER,

U. S. Marshal.

K.

Defendants' answer

Filed May 11, 1923

In the Supreme Court of the District of Columbia

CENTRAL PACIFIC RAILWAY COMPANY

*v.*HUBERT WORK, SECRETARY OF THE INTERIOR,
et al.

Equity No. 41241

Comes now the defendants in the above-entitled suit and for answer to the bill of complaint herein filed say:

1-8. They admit the averments of paragraphs 1 to 8, inclusive.

9. Answering the averments of paragraph 9, they are advised, and so allege, that said averments present conclusions of law which they need not answer.

10-11. They admit the averments of paragraphs 10 and 11.

12. They admit the averments of paragraph 12, except the allegation that at the time of filing said list said section 5 was shown to be nonmineral in character; as to which they admit that the ex parte showing in that behalf made by the plaintiff presented a prima facie case and raised an issue of fact to be determined by the defendants after investigation in the manner prescribed by the rules and regulations of the Land Department; and they say that in the course of that investigation and by reason thereof it developed and was so determined that a portion of said section was mineral; that they deny that at the time of selection the said land was
35 shown to be nonmineral and aver the fact to be that at said time the character of said land, as to whether it was mineral or nonmineral, was not known.

13. They admit the averments of paragraph 13 with the qualification that "ultimate patenting of the lands" necessarily depended upon the results of the "appropriate consideration" mentioned in said paragraph and aver that as to a portion of said section, as hereinafter appears, the appropriate consideration of said list by the defendants resulted in the refusal to issue patent for the particular portion of said section 5 here in controversy.

14. Answering the averments of paragraph 14, they allege that upon receipt of said selection list pursuant to regulations of the Land Department, an examination of the land with a view of ascertaining its character in respect to mineral content was had, and that early in 1918 complaints were filed by two individuals who claimed that they had found certain mineral in said section; that thereupon an agent of the General Land Office on further examination of said section found that the mineral content thereof was confined to the SW. $\frac{1}{4}$ of said section; that thereupon the Commissioner of the General Land Office ordered "adverse proceedings," as averred, against plaintiff as to the said SW. $\frac{1}{4}$ of said section charging that the same was mineral in character, containing valuable deposits of manganese; that with this explanation, they admit the averments of said paragraph.

15-18. They admit the averments of paragraphs 15 to 18 inclusive.

36 19. They admit the averments of fact in paragraph 19 but they are advised, and so aver, that the allegation that plaintiff's "only remaining remedy is by appropriate appeal to the courts" amounts to a conclusion of law which they need not answer, and therefore do not admit.

20. They deny the averments of paragraph 20 if by "departmental practice," "Department of the Interior," or "Land Department" the plaintiff means and includes the Secretary of the Interior or his office. They admit that possibly in some instances the General Land Office, a subordinate bureau in the Department of the Interior, has included in a railroad's so-called "clear list" fractional parts of the smallest legal subdivision, i. e., a quarter-quarter section of 40 acres, and that the said list, containing many tracts of land by description as whole, half, or quarter sections, or

whole, half, or quarter-quarter sections, may have received approval in its entirety by the Secretary of the Interior inadvertently and without knowledge of the fact that it contained said fractional portions and without purpose to approve the passing of title to any tract of land smaller than said smallest legal subdivision of public land. But they deny that any Secretary of the Interior has knowingly or advisedly sanctioned the inclusion in such a clear list of any tract less in size than the smallest legal subdivision, to wit, 40 acres, and, on the contrary, aver that whenever his attention has been directed to the subject matter, the head of the Department of the Interior has forbidden it, unless in instances where said tracts have been created at "lots" or have been carved out of a 40-acre sub-

37 division by the survey of a mining claim covering fractional parts of such a subdivision. And in this connection they aver that the E. $\frac{1}{2}$ NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ of said section 5 is not a fractional lot, nor a fractional part of said quarter-quarter section created by the existence or survey of mining claims located on the W. $\frac{1}{2}$ NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ of said section, but that the said NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ constitutes and is an intact and entire minor legal subdivision of public land of the United States.

21-22. Answering the averments of fact in paragraphs 21 and 22, they admit that said special agent reported his inability to find any mineral showing on said E. $\frac{1}{2}$ NW. $\frac{1}{4}$ SW. $\frac{1}{4}$, and that he recommended that proceedings as to that tract be vacated, and that the then Commissioner of the General Land Office did direct that plaintiff's list should be clear listed as to said E. $\frac{1}{2}$ NW. $\frac{1}{4}$ SW. $\frac{1}{4}$; but as to defendants' reason for refusing to clear list said tract to the plaintiff they aver said reason to be as follows: That in the administration of laws for the disposition of public lands, other than mining laws, nothing is recognized or known in quantity less than the minor legal subdivision of 40 acres, save where specifically authorized by law, unless the same be a fractional lot created in the course of a public survey, and as such known by a lot number or by fractional description, or unless a fractional lot is created by the survey or delimitation of a mining claim or claims out of such minor legal subdivision; that the existence of mineral content in such minor legal subdivision gives character, in the administration of the public land laws, to the entire subdivision, and such sub-

38 division is classified and regarded for the purpose of disposition under said public land laws as mineral land; and that the admission by plaintiff that the western moiety of said NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ does contain mineral affects the entire quarter-quarter section and eliminates any issue of fact involving the classification of said quarter-quarter section as mineral or nonmineral within the meaning of the grant of lands made by the United States to the plaintiff.

23. They are advised and therefore allege that the averments of paragraph 23 amount to conclusions of law which they need not answer.

24. They deny the averments of fact in paragraph 24, but by this denial they do not mean to deny that plaintiff has performed the conditions in consideration of which its land grant was made.

Wherefore, having made full and complete answer to the bill of complaint, they pray that the same may be dismissed with their reasonable costs and that they may be permitted to go hence without day.

HUBERT WORK,
Secretary of the Interior.

WILLIAM SPRY,
Commissioner of the General Land Office.

By their attorney:

C. EDWARD WRIGHT,
Attorney.

JOHN H. EDWARDS,
Solicitor, of Counsel.

39 DISTRICT OF COLUMBIA, ss:

C. Edward Wright, being first sworn, says that he is attorney for the defendants in the above-entitled suit and that he has read over and is acquainted with the contents of the foregoing answer by him subscribed; that he is informed that the matters of fact therein set forth are true and he believes them to be true.

C. EDWARD WRIGHT.

Subscribed and sworn to this 10th day of May, 1923, before me
[SEAL.]

ABE HARRY FURR,
*Notary Public in and for the
District of Columbia.*

Order amending answer

Filed June 20, 1924

In the Supreme Court of the District of Columbia

CENTRAL PACIFIC RAILWAY COMPANY

v.

HUBERT WORK, SECRETARY OF THE INTERIOR, ET AL.

} Equity No. 41241.

On motion of counsel for the defendants, it is, this 20th day of June, 1924,

Ordered that defendants have leave to amend their answer, herein filed, by striking out all of paragraph 20 thereof and by substituting therefor the following:

40 20. They deny the averments of paragraph 20 if by "departmental practice," "Department of the Interior," or "Land Department" the plaintiff means and includes the Secretary of the Interior or his office. They admit that the General Land Office, a subordinate bureau in the Department of the Interior, throughout practically the entire administration of railroad land grants, extending over a period of more than fifty (50) years, has included in railroad so-called "clear lists" fractional parts of the smallest legal subdivision, i. e., a quarter-quarter section of 40 acres, and that said lists, containing as well many tracts of land by description as whole,

half, quarter, or quarter-quarter sections, have received approval in their entirety by the Secretary of the Interior, without personal knowledge on the part of the Secretary that fractions of quarter-quarter sections were embraced therein, and without purpose on the part of the Secretary to approve the passing of title to any tract of land smaller than said smallest legal subdivision of public land. But they deny that any Secretary of the Interior has knowingly or advisedly sanctioned the inclusion in such a clear list of any tract less in size than the smallest legal subdivision, to wit, 40 acres, except as he impliedly sanctioned the same by approval of clear lists including such tracts. On the contrary, they aver that whenever his attention has been directed to the subject matter, the head of the Department of the Interior has forbidden it, unless in instances where said tracts have been created as "lots" or

41 have been carved out of a 40-acre subdivision by the survey of a mining claim covering fractional parts of such a subdivision. And in this connection they aver that the E. $\frac{1}{2}$ NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ of said section 5 is not a fractional lot, nor a fractional part of said quarter-quarter section created by the existence or survey of mining claims located on the W. $\frac{1}{2}$ NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ of said section, but that the said NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ constitutes and is an intact and entire minor legal subdivision of public land of the United States.

By the court:

WENDELL P. STAFFORD, *Justice*.

No objection:

C. F. R. OGILBY,
Per McELROY,
Attorney for plaintiff.

Stipulation of facts

Filed May 5, 1925

In the Supreme Court of the District of Columbia

Holding an Equity Court

CENTRAL PACIFIC RAILWAY COMPANY, PLAINTIFF	} Equity No. 41241
<i>vs.</i>	
HUBERT WORK ET AL., DEFENDANTS	

It is hereby stipulated by the parties hereto, by their respective counsel of record:

42 (a) That the schedule of tracts as contained in "Exhibit F," hereto attached, describes tracts less than forty acres in extent which have been patented by the United States of America to the railroad grantees indicated in said schedule, among them the plaintiff and its predecessors in interest, extending over a period from June 24, 1880, to June 1, 1923.

(b) That the schedule of tracts as contained in "Exhibit G," hereto attached, describes tracts which had been patented to the plaintiff by the United States of America, but which had been in-

volved in suits brought by the United States against the plaintiff on the ground that said tracts, inter alia, were of known mineral character at date of patenting, and that said list includes only those tracts as to which the final decrees in the courts affirmed title in the plaintiff to tracts of less area than forty acres in extent, and recognized and restored title in the United States to the remainder of such subdivisions or forty-acre tracts.

(c) That the copy of the list contained in "Exhibit H," hereto attached, is a true copy of the plaintiff's selection list No. 47, filed in the United States Land Office at Sacramento, California, under the serial number 03334, and that the same constitutes a typical railroad selection list, embracing, inter alia, whole sections, legal subdivisions of sections, and tracts less than forty acres in extent; and

43 (d) That the copies of lists designated as "Exhibits I," "J," and "K," hereto attached, are true copies of the original clear lists of lands patented to the plaintiff, on file in the General Land Office, as follows:

Clear list No.	Date	Patent No.
118-----	April 4, 1901-----	123
270-----	March 10, 1920-----	297
272-----	Feb. 15, 1922-----	299

that said clear lists are typical clear lists taken from the records of the General Land Office; and that the initials appearing on said lists opposite the certificates of the General Land Office are those of officials or examining employees of said office, and that the initials appearing on said lists opposite the approval of the Secretary of the Interior are those of officials or examining employees of the office of the Secretary of the Interior.

C. F. R. OGILBY,
Attorney for Plaintiff.
C. EDWARD WRIGHT,
Attorney for Defendants.

44 "Exhibit F"

LIST OF TRACTS OF LESS THAN A REGULAR FORTY-ACRE TRACT OF A GOVERNMENT-SURVEY LOT SUBDIVISION OF LAND PATENTED BY THE UNITED STATES OF AMERICA TO THE GRANTEE RAILROAD COMPANY OR ITS SUCCESSOR IN INTEREST

Pat-ent No.	Date	Grantee	Subdivision	Sec.	Twp.	Rge.	Mer.	State	Acres
17	6-24-80	Central Pacific	S. 1/2 of SE. 1/4 of NE. 1/4---	25	22 N.	5 E.	M. D.	Calif..	20.00
		R. R. Co.	NW. 1/4 of NE. 1/4 of NE. 1/4---	"	"	"	"	"	10.00
19	6-26-80	" " "	E. 1/2 of NW. 1/4 of NE. 1/4---	11	20 N.	4 E.	"	"	20.00
			W. 1/2 of NE. 1/4 of NW. 1/4---	"	"	"	"	"	20.00
			E. 1/2 of SW. 1/4 of SW. 1/4---	17	23 N.	4 E.	"	"	20.00
33	4-19-81	" " "	N. 1/2 of SW. 1/4 of NW. 1/4---	21	10 N.	9 E.	"	"	20.00
			N. 1/2 of SE. 1/4 of NW. 1/4---	"	"	"	"	"	20.00
			E. 1/2 of NW. 1/4 of SW. 1/4---	"	"	"	"	"	20.00
36	6-23-83	" " "	E. 1/2 of NW. 1/4 of NE. 1/4---	25	12 N.	7 E.	"	"	20.00
			E. 1/2 of W. 1/2 of NW. 1/4 of NE. 1/4---	"	"	"	"	"	10.00

LIST OF TRACTS OF LESS THAN A REGULAR FORTY-ACRE TRACT OF A GOVERNMENT-SURVEY LOT SUBDIVISION OF LAND, ETC.—Continued

Pat-ent No.	Date	Grantee	Subdivision	Sec.	Twp.	Rge.	Mer.	State	Acres
36	6-23-83	Central Pacific R. R. Co.	E. $\frac{1}{2}$ of NE. $\frac{1}{4}$ of SE. $\frac{1}{4}$ ---	1	9 N.	9 E.	M. D.	Calif.	20.00
			SW. $\frac{1}{4}$ of NE. $\frac{1}{4}$ of SE. $\frac{1}{4}$ ---	"	"	"	"	"	10.00
			N. $\frac{1}{2}$ of NE. $\frac{1}{4}$ of NE. $\frac{1}{4}$ ---	7	9 N.	10 E.	"	"	20.00
			W. $\frac{1}{2}$ of NW. $\frac{1}{4}$ of NE. $\frac{1}{4}$ ---	15	10 N.	10 E.	"	"	20.00
			SE. $\frac{1}{4}$ of NW. $\frac{1}{4}$ of NE. $\frac{1}{4}$ ---	"	"	"	"	"	10.00
			N. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of SE. $\frac{1}{4}$ ---	7	11 N.	10 E.	"	"	20.00
			N. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of SE. $\frac{1}{4}$ ---	"	"	"	"	"	20.00
			S. $\frac{1}{2}$ of N. $\frac{1}{2}$ of NW. $\frac{1}{4}$ of SW. $\frac{1}{4}$ ---	21	"	"	"	"	10.00
			S. $\frac{1}{2}$ of NW. $\frac{1}{4}$ of SW. $\frac{1}{4}$ ---	"	"	"	"	"	20.00
			W. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of NE. $\frac{1}{4}$ ---	27	"	"	"	"	20.00
42	1-31-85	" " "	S. $\frac{1}{2}$ of NE. $\frac{1}{4}$ of SE. $\frac{1}{4}$ ---	25	17 N.	10 E.	"	"	20.00
			S. $\frac{1}{2}$ of NW. $\frac{1}{4}$ of SE. $\frac{1}{4}$ ---	"	"	"	"	"	20.00
			S. $\frac{1}{2}$ of NE. $\frac{1}{4}$ of SW. $\frac{1}{4}$ ---	"	"	"	"	"	20.00
			N. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of NE. $\frac{1}{4}$ ---	23	17 N.	11 E.	"	"	20.00
			N. $\frac{1}{2}$ of NE. $\frac{1}{4}$ of NW. $\frac{1}{4}$ ---	"	"	"	"	"	20.00
			N. $\frac{1}{2}$ of NW. $\frac{1}{4}$ of NW. $\frac{1}{4}$ ---	"	"	"	"	"	10.00
			SW. $\frac{1}{4}$ of NW. $\frac{1}{4}$ of NW. $\frac{1}{4}$ ---	"	"	"	"	"	10.00
			NW. $\frac{1}{4}$ of SW. $\frac{1}{4}$ of NW. $\frac{1}{4}$ ---	"	"	"	"	"	10.00
			S. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of NW. $\frac{1}{4}$ ---	"	"	"	"	"	20.00
			SW. $\frac{1}{4}$ of NW. $\frac{1}{4}$ of SE. $\frac{1}{4}$ ---	"	"	"	"	"	10.00
			N. $\frac{1}{2}$ of NE. $\frac{1}{4}$ of SE. $\frac{1}{4}$ ---	"	"	"	"	"	20.00
			SE. $\frac{1}{4}$ of NE. $\frac{1}{4}$ of SE. $\frac{1}{4}$ ---	"	"	"	"	"	10.00
			SW. $\frac{1}{4}$ of SE. $\frac{1}{4}$ of SE. $\frac{1}{4}$ ---	"	"	"	"	"	10.00
43	4-30-85	" " "	N. $\frac{1}{2}$ of NE. $\frac{1}{4}$ of NW. $\frac{1}{4}$ ---	23	12 N.	7 E.	"	"	20.00
			N. $\frac{1}{2}$ of NW. $\frac{1}{4}$ of NW. $\frac{1}{4}$ ---	"	"	"	"	"	20.00
			N. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of NE. $\frac{1}{4}$ ---	"	"	"	"	"	20.00
			N. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of NE. $\frac{1}{4}$ ---	"	"	"	"	"	20.00
			S. $\frac{1}{2}$ of NE. $\frac{1}{4}$ of SE. $\frac{1}{4}$ ---	"	"	"	"	"	20.00
			S. $\frac{1}{2}$ of NW. $\frac{1}{4}$ of SE. $\frac{1}{4}$ ---	"	"	"	"	"	20.00
			N. $\frac{1}{2}$ of Lot 7 of SE. $\frac{1}{4}$ ---	1	11 N.	10 E.	"	"	23.94
45]		" " "	N. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of SE. $\frac{1}{4}$ ---	"	"	"	"	"	20.00
			S. $\frac{1}{2}$ of lot 2 of NE. $\frac{1}{4}$ ---	5	14 N.	10 E.	"	"	20.64
			NW. $\frac{1}{4}$ of lot 3 of NW. $\frac{1}{4}$ ---	"	"	"	"	"	10.28
			S. $\frac{1}{2}$ of lot 3 of NW. $\frac{1}{4}$ ---	"	"	"	"	"	20.57
			N. $\frac{1}{2}$ of NE. $\frac{1}{4}$ of NE. $\frac{1}{4}$ ---	31	"	"	"	"	20.00
			SE. $\frac{1}{4}$ of NE. $\frac{1}{4}$ of NE. $\frac{1}{4}$ ---	"	"	"	"	"	10.00
			N. $\frac{1}{2}$ of NW. $\frac{1}{4}$ of NE. $\frac{1}{4}$ ---	"	"	"	"	"	20.09
			SW. $\frac{1}{4}$ of NW. $\frac{1}{4}$ of NE. $\frac{1}{4}$ ---	"	"	"	"	"	10.00
			E. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of NE. $\frac{1}{4}$ ---	"	"	"	"	"	20.00
			NE. $\frac{1}{4}$ of NE. $\frac{1}{4}$ of SE. $\frac{1}{4}$ ---	"	"	"	"	"	10.00
			S. $\frac{1}{2}$ of NE. $\frac{1}{4}$ of SE. $\frac{1}{4}$ ---	"	"	"	"	"	20.00
			S. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of SW. $\frac{1}{4}$ ---	5	10 N.	11 E.	"	"	20.00
			E. $\frac{1}{2}$ of NE. $\frac{1}{4}$ of NW. $\frac{1}{4}$ ---	17	14 N.	11 E.	"	"	20.00
			NE. $\frac{1}{4}$ of NE. $\frac{1}{4}$ of SW. $\frac{1}{4}$ ---	"	"	"	"	"	10.00
20	3-21-92	Southern Pacific R. R. Co.	E. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of NE. $\frac{1}{4}$ ---	13	15 S.	25 E.	"	"	20.00
27	4-24-95	Central Pacific R. R. Co.	W. $\frac{1}{2}$ of NW. $\frac{1}{4}$ of NE. $\frac{1}{4}$ ---	15	23 N.	3 E.	"	"	20.00
			W. $\frac{1}{2}$ of lot 2 of NE. $\frac{1}{4}$ ---	"	"	"	"	"	10.00
			E. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of NW. $\frac{1}{4}$ ---	27	20 N.	4 E.	"	"	20.00
			S. $\frac{1}{2}$ of S. $\frac{1}{2}$ of NE. $\frac{1}{4}$ of NE. $\frac{1}{4}$ ---	33	21 N.	4 E.	"	"	10.00
32	12-13-95	" " "	W. $\frac{1}{2}$ of NW. $\frac{1}{4}$ of NE. $\frac{1}{4}$ ---	11	20 N.	4 E.	"	"	20.00
			E. $\frac{1}{2}$ of NE. $\frac{1}{4}$ of NW. $\frac{1}{4}$ ---	"	"	"	"	"	20.00
35	2-14-96	" " "	N. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of SE. $\frac{1}{4}$ ---	29	32 N.	4 W.	"	"	20.00
			N. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of SE. $\frac{1}{4}$ ---	"	"	"	"	"	20.00
38	3-13-96	" " "	N. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of NE. $\frac{1}{4}$ ---	17	30 N.	6 W.	"	"	20.00
			N. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of NE. $\frac{1}{4}$ ---	"	"	"	"	"	20.00
			SE. $\frac{1}{4}$ of SE. $\frac{1}{4}$ of NE. $\frac{1}{4}$ ---	"	"	"	"	"	10.00
			SW. $\frac{1}{4}$ of SE. $\frac{1}{4}$ of NW. $\frac{1}{4}$ ---	"	"	"	"	"	10.00
			S. $\frac{1}{2}$ of NW. $\frac{1}{4}$ of SE. $\frac{1}{4}$ ---	"	"	"	"	"	20.00
			W. $\frac{1}{2}$ of NW. $\frac{1}{4}$ of NE. $\frac{1}{4}$ ---	11	30 N.	7 W.	"	"	20.00
			N. $\frac{1}{2}$ of NE. $\frac{1}{4}$ of NE. $\frac{1}{4}$ ---	"	"	"	"	"	20.00
			W. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of SE. $\frac{1}{4}$ ---	5	22 N.	3 E.	"	"	20.00
			NE. $\frac{1}{4}$ of SW. $\frac{1}{4}$ of SE. $\frac{1}{4}$ ---	"	"	"	"	"	10.00
			SE. $\frac{1}{4}$ of SW. $\frac{1}{4}$ of NE. $\frac{1}{4}$ ---	"	"	"	"	"	10.00
			W. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of NE. $\frac{1}{4}$ ---	"	"	"	"	"	10.00
			W. $\frac{1}{2}$ of lot 2 of NE. $\frac{1}{4}$ ---	"	"	"	"	"	21.19
40	3-13-96	" " "	NE. $\frac{1}{4}$ of NW. $\frac{1}{4}$ of SW. $\frac{1}{4}$ ---	33	23 N.	3 E.	"	"	10.00
			S. $\frac{1}{2}$ of NW. $\frac{1}{4}$ of SW. $\frac{1}{4}$ ---	"	"	"	"	"	20.00
			E. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of NW. $\frac{1}{4}$ ---	27	16 N.	6 E.	"	"	20.00
41	3-14-96	" " "	S. $\frac{1}{2}$ of NE. $\frac{1}{4}$ of NE. $\frac{1}{4}$ ---	13	46 N.	6 W.	"	"	20.00
			E. $\frac{1}{2}$ of NE. $\frac{1}{4}$ of SE. $\frac{1}{4}$ ---	29	37 N.	7 W.	"	"	20.00
			E. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of SE. $\frac{1}{4}$ ---	"	"	"	"	"	20.00
44	3-27-96	" " "	W. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of NW. $\frac{1}{4}$ ---	27	20 N.	4 E.	"	"	20.00
			S. $\frac{1}{2}$ of NW. $\frac{1}{4}$ of SW. $\frac{1}{4}$ ---	29	"	"	"	"	20.00

LIST OF TRACTS OF LESS THAN A REGULAR FORTY-ACRE TRACT OF A GOVERNMENT-SURVEY LOT SUBDIVISION OF LAND, ETC.—Continued

Pat-ent No.	Date	Grantee	Subdivision	Sec.	Twp.	Rge.	Mer.	State	Acres
46] 32	5- 7-96	Southern Pacific R. R. Co.	NW. $\frac{1}{4}$ of SE. $\frac{1}{4}$ of SW. $\frac{1}{4}$	21	5 S.	4 W.	S. B.	Calif.	10.00
			N. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of SW. $\frac{1}{4}$	"	"	"	"	"	20.00
47	5- 9-96	Central Pacific R. R. Co.	N. $\frac{1}{2}$ of NW. $\frac{1}{4}$ of NE. $\frac{1}{4}$	7	38 N.	5 W.	M. D.	"	20.00
			W. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of NE. $\frac{1}{4}$	"	"	"	"	"	20.00
			S. $\frac{1}{2}$ of NE. $\frac{1}{4}$ of NW. $\frac{1}{4}$	33	48 N.	8 W.	"	"	20.00
			S. $\frac{1}{2}$ of NW. $\frac{1}{4}$ of NW. $\frac{1}{4}$	33	48 N.	8 W.	"	"	20.00
44	6-27-96	Southern Pacific R. R. Co.	N. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of SE. $\frac{1}{4}$	31	24 S.	29 E.	"	"	20.00
49	7-28-96	" " "	SW. $\frac{1}{4}$ of SE. $\frac{1}{4}$ of SE. $\frac{1}{4}$	21	"	"	"	"	10.00
35	8-19-96	" " "	W. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of NE. $\frac{1}{4}$	13	15 S.	25 E.	"	"	20.00
			W. $\frac{1}{2}$ of NW. $\frac{1}{4}$ of NE. $\frac{1}{4}$	29	5 S.	4 W.	S. B.	"	20.00
			W. $\frac{1}{2}$ of E. $\frac{1}{2}$ of NW. $\frac{1}{4}$ of NE. $\frac{1}{4}$	"	"	"	"	"	10.00
66	9-21-96	Central Pacific R. R. Co.	W. $\frac{1}{2}$ of W. $\frac{1}{2}$ of NW. $\frac{1}{4}$ of NE. $\frac{1}{4}$	25	12 N.	7 E.	M. D.	"	10.00
			S. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of NW. $\frac{1}{4}$	23	16 N.	7 E.	"	"	20.00
			W. $\frac{1}{2}$ of NW. $\frac{1}{4}$ of NW. $\frac{1}{4}$	"	"	"	"	"	20.00
			W. $\frac{1}{2}$ of E. $\frac{1}{2}$ of NW. $\frac{1}{4}$ of NW. $\frac{1}{4}$	"	"	"	"	"	10.00
			W. $\frac{1}{2}$ of lot 4 of SE. $\frac{1}{4}$	13	16 N.	9 E.	"	"	10.00
			N. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of SE. $\frac{1}{4}$	7	10 N.	10 E.	"	"	20.00
			N. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of SE. $\frac{1}{4}$	"	"	"	"	"	20.00
			SW. $\frac{1}{4}$ of NE. $\frac{1}{4}$ of NE. $\frac{1}{4}$	15	10 N.	10 E.	"	"	10.00
			W. $\frac{1}{2}$ of NW. $\frac{1}{4}$ of SW. $\frac{1}{4}$	3	11 N.	10 E.	"	"	20.00
			W. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of SW. $\frac{1}{4}$	"	"	"	"	"	20.00
			S. $\frac{1}{2}$ of NW. $\frac{1}{4}$ of SE. $\frac{1}{4}$	31	"	"	"	"	20.00
			S. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of SE. $\frac{1}{4}$	"	"	"	"	"	20.00
			NE. $\frac{1}{4}$ of NW. $\frac{1}{4}$ of SE. $\frac{1}{4}$	27	12 N.	10 E.	"	"	10.00
			SE. $\frac{1}{4}$ of SW. $\frac{1}{4}$ of NW. $\frac{1}{4}$	29	13 N.	10 E.	"	"	10.00
			W. $\frac{1}{2}$ of NW. $\frac{1}{4}$ of SE. $\frac{1}{4}$	"	"	"	"	"	20.00
			E. $\frac{1}{2}$ of NW. $\frac{1}{4}$ of SW. $\frac{1}{4}$	"	"	"	"	"	20.00
			N. $\frac{1}{2}$ of NE. $\frac{1}{4}$ of NE. $\frac{1}{4}$	21	17 N.	10 E.	"	"	20.00
			N. $\frac{1}{2}$ of NW. $\frac{1}{4}$ of NE. $\frac{1}{4}$	"	"	"	"	"	20.00
			SE. $\frac{1}{4}$ of NE. $\frac{1}{4}$ of NE. $\frac{1}{4}$	"	"	"	"	"	10.00
			E. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of NE. $\frac{1}{4}$	"	"	"	"	"	20.00
			NE. $\frac{1}{4}$ of NE. $\frac{1}{4}$ of SE. $\frac{1}{4}$	"	"	"	"	"	10.00
			S. $\frac{1}{2}$ of NE. $\frac{1}{4}$ of SE. $\frac{1}{4}$	"	"	"	"	"	20.00
			S. $\frac{1}{2}$ of N. $\frac{1}{2}$ of NE. $\frac{1}{4}$ of SW. $\frac{1}{4}$	29	"	"	"	"	10.00
			S. $\frac{1}{2}$ of NE. $\frac{1}{4}$ of SW. $\frac{1}{4}$	"	"	"	"	"	20.00
			W. $\frac{1}{2}$ of NW. $\frac{1}{4}$ of SW. $\frac{1}{4}$	5	10 N.	11 E.	"	"	20.00
			W. $\frac{1}{2}$ of lot 1	7	11 N.	11 E.	"	"	20.38
71	12- 8-96	" " "	S. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of NW. $\frac{1}{4}$	23	12 N.	7 E.	"	"	20.00
			S. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of NW. $\frac{1}{4}$	"	"	"	"	"	20.00
			N. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of SW. $\frac{1}{4}$	33	17 N.	8 E.	"	"	20.00
			SW. $\frac{1}{4}$ of SE. $\frac{1}{4}$ of SW. $\frac{1}{4}$	"	"	"	"	"	10.00
			S. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of SE. $\frac{1}{4}$	7	10 N.	10 E.	"	"	20.00
			S. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of SE. $\frac{1}{4}$	"	"	"	"	"	20.00
			E. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of NW. $\frac{1}{4}$	5	12 N.	10 E.	"	"	20.00
			N. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of NE. $\frac{1}{4}$	23	15 N.	10 E.	"	"	20.00
53	12- 8-96	" " "	S. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of NW. $\frac{1}{4}$	17	30 N.	6 W.	"	"	20.00
			S. $\frac{1}{2}$ of NE. $\frac{1}{4}$ of NE. $\frac{1}{4}$	7	33 N.	8 W.	"	"	20.00
47] 44	1- 6-97	Southern Pacific R. R. Co.	NW. $\frac{1}{4}$ of NE. $\frac{1}{4}$ of SE. $\frac{1}{4}$	21	5 S.	4 W.	S. B.	"	10.00
			N. $\frac{1}{2}$ of NW. $\frac{1}{4}$ of SE. $\frac{1}{4}$	"	"	"	"	"	20.00
			N. $\frac{1}{2}$ of S. $\frac{1}{2}$ of NW. $\frac{1}{4}$ of SE. $\frac{1}{4}$	"	"	"	"	"	10.00
71	5-17-97	" " "	E. $\frac{1}{2}$ of NE. $\frac{1}{4}$ of NW. $\frac{1}{4}$	3	25 S.	29 E.	M. D.	"	20.00
			E. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of NW. $\frac{1}{4}$	"	"	"	"	"	20.00
			SW. $\frac{1}{4}$ of SE. $\frac{1}{4}$ of NW. $\frac{1}{4}$	"	"	"	"	"	10.00
			SE. $\frac{1}{4}$ of SW. $\frac{1}{4}$ of NW. $\frac{1}{4}$	"	"	"	"	"	10.00
			W. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of NW. $\frac{1}{4}$	"	"	"	"	"	20.00
			W. $\frac{1}{2}$ of NW. $\frac{1}{4}$ of NW. $\frac{1}{4}$	"	"	"	"	"	20.00
61	12-22-97	Central Pacific R. R. Co.	N. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of SE. $\frac{1}{4}$	3	22 N.	3 E.	"	"	20.00
			SE. $\frac{1}{4}$ of SE. $\frac{1}{4}$ of SE. $\frac{1}{4}$	"	"	"	"	"	10.00
			NE. $\frac{1}{4}$ of SE. $\frac{1}{4}$ of NE. $\frac{1}{4}$	5	"	"	"	"	10.00
			SE. $\frac{1}{4}$ of NW. $\frac{1}{4}$ of NW. $\frac{1}{4}$	11	"	"	"	"	10.00
64	4-12-98	" " "	S. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of SE. $\frac{1}{4}$	29	37 N.	7 W.	"	"	20.00
			NW. $\frac{1}{4}$ of SW. $\frac{1}{4}$ of SE. $\frac{1}{4}$	"	"	"	"	"	10.00
65	4-12-98	" " "	N. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of NE. $\frac{1}{4}$	19	36 N.	9 W.	"	"	20.00
			SW. $\frac{1}{4}$ of SW. $\frac{1}{4}$ of NE. $\frac{1}{4}$	"	"	"	"	"	10.00
			NW. $\frac{1}{4}$ of NW. $\frac{1}{4}$ of SE. $\frac{1}{4}$	"	"	"	"	"	10.00
			SE. $\frac{1}{4}$ of NE. $\frac{1}{4}$ of SE. $\frac{1}{4}$	"	"	"	"	"	10.00

LIST OF TRACTS OF LESS THAN A REGULAR FORTY-ACRE TRACT OF A GOVERNMENT-SURVEY LOT SUBDIVISION OF LAND, ETC.—Continued

Pat- ent No.	Date	Grantee	Subdivision	Sec.	Twp.	Rge.	Mer.	State	Acres
65	4-12-98	Central Pacific R. R. Co.	E. $\frac{1}{4}$ of SW. $\frac{1}{4}$ of NE. $\frac{1}{4}$ of SE. $\frac{1}{4}$.	19	36 N.	9 W.	M. D.	Calif..	5.00
			NE. $\frac{1}{4}$ of SE. $\frac{1}{4}$ of SE. $\frac{1}{4}$ ----	"	"	"	"	"	10.00
			E. $\frac{1}{4}$ of NW. $\frac{1}{4}$ of SE. $\frac{1}{4}$ of SE. $\frac{1}{4}$.	"	"	"	"	"	5.00
			SE. $\frac{1}{4}$ of SE. $\frac{1}{4}$ of SE. $\frac{1}{4}$ ----	"	"	"	"	"	10.00
			SW. $\frac{1}{4}$ of SE. $\frac{1}{4}$ of SE. $\frac{1}{4}$ ----	"	"	"	"	"	10.00
66	4-12-98	" " "	N. $\frac{1}{4}$ of NE. $\frac{1}{4}$ of NE. $\frac{1}{4}$ ----	13	46 N.	6 W.	"	"	20.00
			N. $\frac{1}{4}$ of NE. $\frac{1}{4}$ of NW. $\frac{1}{4}$ ----	33	48 N.	8 W.	"	"	20.00
			N. $\frac{1}{4}$ of NW. $\frac{1}{4}$ of NW. $\frac{1}{4}$ ----	"	"	"	"	"	20.00
67	4-12-98	" " "	N. $\frac{1}{4}$ of lot 2-----	3	38 N.	9 W.	"	"	19.42
			N. $\frac{1}{4}$ of lot 1-----	"	"	"	"	"	19.47
			S. $\frac{1}{4}$ of NW. $\frac{1}{4}$ of NE. $\frac{1}{4}$ ----	35	"	"	"	"	20.00
			N. $\frac{1}{4}$ of lot 1-----	7	46 N.	10 W.	"	"	18.83
			S. $\frac{1}{4}$ of lot 2-----	"	"	"	"	"	18.91
68	7- 9-98	" " "	E. $\frac{1}{4}$ of NE. $\frac{1}{4}$ of NW. $\frac{1}{4}$ ----	5	33 N.	5 W.	"	"	20.34
			W. $\frac{1}{4}$ of SW. $\frac{1}{4}$ of NW. $\frac{1}{4}$ ----	"	"	"	"	"	20.00
			S. $\frac{1}{4}$ of SE. $\frac{1}{4}$ of NW. $\frac{1}{4}$ ----	"	"	"	"	"	20.00
			NE. $\frac{1}{4}$ of SE. $\frac{1}{4}$ of NW. $\frac{1}{4}$ ----	"	"	"	"	"	10.00
			S. $\frac{1}{4}$ of SE. $\frac{1}{4}$ of SW. $\frac{1}{4}$ ----	15	"	"	"	"	20.00
			E. $\frac{1}{4}$ of SE. $\frac{1}{4}$ of NE. $\frac{1}{4}$ ----	"	"	"	"	"	20.00
			N. $\frac{1}{4}$ of NW. $\frac{1}{4}$ of SW. $\frac{1}{4}$ ----	"	"	"	"	"	20.00
			W. $\frac{1}{4}$ of SW. $\frac{1}{4}$ of NW. $\frac{1}{4}$ ----	21	"	"	"	"	20.00
			S. $\frac{1}{4}$ of SW. $\frac{1}{4}$ of SW. $\frac{1}{4}$ ----	"	"	"	"	"	20.00
			E. $\frac{1}{4}$ of NE. $\frac{1}{4}$ of SW. $\frac{1}{4}$ ----	"	"	"	"	"	20.00
			S. $\frac{1}{4}$ of NE. $\frac{1}{4}$ of NE. $\frac{1}{4}$ ----	"	"	"	"	"	20.00
58	7-19-98	Southern Pacific R. R. Co.	W. $\frac{1}{4}$ of SW. $\frac{1}{4}$ of NW. $\frac{1}{4}$ ----	9	5 S.	4 W.	S. B.	"	20.00
			W. $\frac{1}{4}$ of NW. $\frac{1}{4}$ of SW. $\frac{1}{4}$ ----	"	"	"	"	"	20.00
			W. $\frac{1}{4}$ of SW. $\frac{1}{4}$ of SW. $\frac{1}{4}$ ----	"	"	"	"	"	20.00
93	12- 6-98	Central Pacific R. R. Co.	S. $\frac{1}{4}$ of W. $\frac{1}{4}$ of lot 5-----	1	15 N.	12 E.	M. D.	"	20.00
			N. $\frac{1}{4}$ of W. $\frac{1}{4}$ of lot 8-----	"	"	"	"	"	20.00
48]									
94	12-6-98	" " "	N. $\frac{1}{4}$ of SW. $\frac{1}{4}$ of SW. $\frac{1}{4}$ ----	5	10 N.	9 E.	"	"	20.00
74	5-20-99	" " "	E. $\frac{1}{4}$ of NW. $\frac{1}{4}$ of SE. $\frac{1}{4}$ ----	9	31 N.	5 W.	"	"	20.00
			S. $\frac{1}{4}$ of SW. $\frac{1}{4}$ of SE. $\frac{1}{4}$ ----	"	"	"	"	"	20.00
			W. $\frac{1}{4}$ of NW. $\frac{1}{4}$ of NE. $\frac{1}{4}$ ----	29	"	"	"	"	20.00
115	3-9-01	Central Pacific Ry. Co.	NW. $\frac{1}{4}$ of SE. $\frac{1}{4}$ of NE. $\frac{1}{4}$ ----	13	12 N.	9 E.	"	"	10.00
			S. $\frac{1}{4}$ of SE. $\frac{1}{4}$ of NE. $\frac{1}{4}$ ----	"	"	"	"	"	20.00
			E. $\frac{1}{4}$ of SE. $\frac{1}{4}$ of SE. $\frac{1}{4}$ ----	17	9 N.	10 E.	"	"	20.00
			S. $\frac{1}{4}$ of SE. $\frac{1}{4}$ of NE. $\frac{1}{4}$ ----	9	10 N.	10 E.	"	"	20.00
			E. $\frac{1}{4}$ of E. $\frac{1}{4}$ of NE. $\frac{1}{4}$ of SE. $\frac{1}{4}$.	11	12 N.	10 E.	"	"	10.00
			E. $\frac{1}{4}$ of NE. $\frac{1}{4}$ of SE. $\frac{1}{4}$ ----	27	"	"	"	"	20.00
			N. $\frac{1}{4}$ of SE. $\frac{1}{4}$ of SE. $\frac{1}{4}$ ----	"	"	"	"	"	20.00
			SE. $\frac{1}{4}$ of SE. $\frac{1}{4}$ of SE. $\frac{1}{4}$ ----	"	"	"	"	"	10.00
			NE. $\frac{1}{4}$ of SW. $\frac{1}{4}$ of SE. $\frac{1}{4}$ ----	"	"	"	"	"	10.00
			N. $\frac{1}{4}$ of SW. $\frac{1}{4}$ of NW. $\frac{1}{4}$ ----	29	13 N.	10 E.	"	"	20.00
			SW. $\frac{1}{4}$ of SW. $\frac{1}{4}$ of NW. $\frac{1}{4}$ ----	"	"	"	"	"	10.00
			W. $\frac{1}{4}$ of NW. $\frac{1}{4}$ of SW. $\frac{1}{4}$ ----	"	"	"	"	"	20.00
			E. $\frac{1}{4}$ of NW. $\frac{1}{4}$ of SE. $\frac{1}{4}$ ----	"	"	"	"	"	20.00
			NW. $\frac{1}{4}$ of NE. $\frac{1}{4}$ of SW. $\frac{1}{4}$ ----	33	"	"	"	"	10.00
			S. $\frac{1}{4}$ of NE. $\frac{1}{4}$ of SW. $\frac{1}{4}$ ----	"	"	"	"	"	20.00
			W. $\frac{1}{4}$ of E. $\frac{1}{4}$ of SE. $\frac{1}{4}$ of SW. $\frac{1}{4}$.	"	"	"	"	"	10.00
			W. $\frac{1}{4}$ of SE. $\frac{1}{4}$ of SW. $\frac{1}{4}$ ----	"	"	"	"	"	20.00
			N. $\frac{1}{4}$ of NE. $\frac{1}{4}$ of SE. $\frac{1}{4}$ ----	"	"	"	"	"	20.00
			S. $\frac{1}{4}$ of S. $\frac{1}{4}$ of NE. $\frac{1}{4}$ of SE. $\frac{1}{4}$.	"	"	"	"	"	10.00
			NE. $\frac{1}{4}$ of NW. $\frac{1}{4}$ of SE. $\frac{1}{4}$ ----	"	"	"	"	"	10.00
			E. $\frac{1}{4}$ of SE. $\frac{1}{4}$ of SE. $\frac{1}{4}$ ----	"	"	"	"	"	20.00
			E. $\frac{1}{4}$ of W. $\frac{1}{4}$ of SE. $\frac{1}{4}$ of SE. $\frac{1}{4}$.	"	"	"	"	"	10.00
			W. $\frac{1}{4}$ of E. $\frac{1}{4}$ of SW. $\frac{1}{4}$ of SE. $\frac{1}{4}$.	"	"	"	"	"	10.00
			E. $\frac{1}{4}$ of W. $\frac{1}{4}$ of SW. $\frac{1}{4}$ of SE. $\frac{1}{4}$.	"	"	"	"	"	10.00
118	3-27-01	" " "	NE. $\frac{1}{4}$ of SW. $\frac{1}{4}$ of SE. $\frac{1}{4}$ ----	25	14 N.	10 E.	"	"	10.00
			NW. $\frac{1}{4}$ of SW. $\frac{1}{4}$ of NE. $\frac{1}{4}$ ----	31	"	"	"	"	10.00
			N. $\frac{1}{4}$ of SW. $\frac{1}{4}$ of NE. $\frac{1}{4}$ ----	13	15 N.	10 E.	"	"	20.00
			N. $\frac{1}{4}$ of SW. $\frac{1}{4}$ of SW. $\frac{1}{4}$ ----	"	"	"	"	"	20.00
			S. $\frac{1}{4}$ of NW. $\frac{1}{4}$ of SE. $\frac{1}{4}$ ----	13	15 N.	10 E.	"	"	20.00
			NE. $\frac{1}{4}$ of SE. $\frac{1}{4}$ of SE. $\frac{1}{4}$ ----	23	"	"	"	"	10.00
			S. $\frac{1}{4}$ of SE. $\frac{1}{4}$ of SE. $\frac{1}{4}$ ----	"	"	"	"	"	20.00
			NE. $\frac{1}{4}$ of SE. $\frac{1}{4}$ of NW. $\frac{1}{4}$ ----	29	"	"	"	"	10.00
			S. $\frac{1}{4}$ of SE. $\frac{1}{4}$ of NW. $\frac{1}{4}$ ----	"	"	"	"	"	20.00
123	4-4-01	" " "	SE. $\frac{1}{4}$ of SW. $\frac{1}{4}$ of NE. $\frac{1}{4}$ ----	25	16 N.	7 E.	"	"	10.00
			W. $\frac{1}{4}$ of SW. $\frac{1}{4}$ of NE. $\frac{1}{4}$ ----	"	"	"	"	"	20.00
			S. $\frac{1}{4}$ of NE. $\frac{1}{4}$ of NW. $\frac{1}{4}$ ----	"	"	"	"	"	20.00
			SE. $\frac{1}{4}$ of NW. $\frac{1}{4}$ of NW. $\frac{1}{4}$ ----	"	"	"	"	"	10.00
			N. $\frac{1}{4}$ of SE. $\frac{1}{4}$ of SE. $\frac{1}{4}$ ----	17	16 N.	8 E.	"	"	20.00
			N. $\frac{1}{4}$ of SW. $\frac{1}{4}$ of SE. $\frac{1}{4}$ ----	"	"	"	"	"	20.00

LIST OF TRACTS OF LESS THAN A REGULAR FORTY-ACRE TRACT OF A GOVERNMENT-SURVEY LOT SUBDIVISION OF LAND, ETC.—Continued

Pat- ent No.	Date	Grantee	Subdivision	Sec.	Twp.	Rge.	Mer.	State	Acres
123 49]	4- 4-01	Central Pacific Ry. Co.	SW. $\frac{1}{4}$ of NE. $\frac{1}{4}$ of NW. $\frac{1}{4}$ of NW. $\frac{1}{4}$.	21	16 N.	8 E.	M. D.	Calif.	2.50
			W. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of NW. $\frac{1}{4}$ of NW. $\frac{1}{4}$.	"	"	"	"	"	5.00
			S. $\frac{1}{2}$ of NW. $\frac{1}{4}$ of NW. $\frac{1}{4}$ of NW. $\frac{1}{4}$.	"	"	"	"	"	5.00
			SW. $\frac{1}{4}$ of NW. $\frac{1}{4}$ of NW. $\frac{1}{4}$	"	"	"	"	"	10.00
			S. $\frac{1}{2}$ of N. $\frac{1}{2}$ of NW. $\frac{1}{4}$ of SE. $\frac{1}{4}$.	29	17 N.	10 E.	"	"	10.00
			S. $\frac{1}{2}$ of NW. $\frac{1}{4}$ of SE. $\frac{1}{4}$ ---	"	"	"	"	"	20.00
85	5- 6-01	Central Pacific	N. $\frac{1}{2}$ of N. $\frac{1}{2}$ of N. $\frac{1}{2}$ of	33	31 N.	5 W.	"	"	20.00
86	5- 6-01	" " "	SW. $\frac{1}{4}$.						
			N. $\frac{1}{2}$ of NE. $\frac{1}{4}$ of NE. $\frac{1}{4}$ ---	11	36 N.	7 W.	"	"	20.00
			N. $\frac{1}{2}$ of N. $\frac{1}{2}$ of NE. $\frac{1}{4}$ ---	9	37 N.	7 W.	"	"	40.00
			E. $\frac{1}{2}$ of NE. $\frac{1}{4}$ of SE. $\frac{1}{4}$ ---	"	"	"	"	"	20.00
87	5- 6-01	" " "	S. $\frac{1}{2}$ of NE. $\frac{1}{4}$ of SE. $\frac{1}{4}$ ---	31	36 N.	5 W.	"	"	20.00
			S. $\frac{1}{2}$ of NW. $\frac{1}{4}$ of SE. $\frac{1}{4}$ ---	"	"	"	"	"	20.00
			E. $\frac{1}{2}$ of NE. $\frac{1}{4}$ of SW. $\frac{1}{4}$ ---	27	30 N.	6 W.	"	"	20.00
128	7-27-01	" " "	SE. $\frac{1}{4}$ of NW. $\frac{1}{4}$ of SE. $\frac{1}{4}$ ---	21	17 N.	10 E.	"	"	10.00
129	7-27-01	" " "	N. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of NW. $\frac{1}{4}$ ---	25	12 N.	8 E.	"	"	20.00
			SW. $\frac{1}{4}$ of SW. $\frac{1}{4}$ of NE. $\frac{1}{4}$ ---	29	13 N.	10 E.	"	"	10.00
			S. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of NW. $\frac{1}{4}$ ---	"	"	"	"	"	20.00
			N. $\frac{1}{2}$ of N. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of NW. $\frac{1}{4}$.	33	"	"	"	"	10.00
			N. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of NW. $\frac{1}{4}$ ---	"	"	"	"	"	20.00
131	8-22-01	Central Pacific Ry. Co.	N. $\frac{1}{2}$ of lot 2 of NW. $\frac{1}{4}$ ---	25	12 N.	7 E.	"	"	10.97
132	8-22-01	Central Pacific R. R. Co.	S. $\frac{1}{2}$ of lot 2 of NW. $\frac{1}{4}$ ---	25	12 N.	7 E.	"	"	10.88
93	10-15-01	" " "	N. $\frac{1}{2}$ of S. $\frac{1}{2}$ of NE. $\frac{1}{4}$ ---	31	34 N.	6 W.	"	"	40.00
			N. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of NW. $\frac{1}{4}$ ---	"	"	"	"	"	20.00
			N. $\frac{1}{2}$ of lot 2 of NW. $\frac{1}{4}$ ---	"	"	"	"	"	17.84
			SE. $\frac{1}{4}$ of SW. $\frac{1}{4}$ of NE. $\frac{1}{4}$ ---	5	46 N.	6 W.	"	"	10.00
			NW. $\frac{1}{4}$ of SW. $\frac{1}{4}$ of NE. $\frac{1}{4}$ ---	"	"	"	"	"	10.00
			E. $\frac{1}{2}$ of NW. $\frac{1}{4}$ of NW. $\frac{1}{4}$ ---	17	37 N.	7 W.	"	"	20.00
			S. $\frac{1}{2}$ of NW. $\frac{1}{4}$ of SE. $\frac{1}{4}$ ---	25	32 N.	9 W.	"	"	20.00
			N. $\frac{1}{2}$ of N. $\frac{1}{2}$ of NE. $\frac{1}{4}$ of SW. $\frac{1}{4}$.	"	"	"	"	"	10.00
			N. $\frac{1}{2}$ of S. $\frac{1}{2}$ of NE. $\frac{1}{4}$ of NW. $\frac{1}{4}$.	9	46 N.	9 W.	"	"	10.00
			N. $\frac{1}{2}$ of NE. $\frac{1}{4}$ of NW. $\frac{1}{4}$ ---	"	"	"	"	"	20.00
135	12-30-01	Central Pacific Ry. Co.	N. $\frac{1}{2}$ of W. $\frac{1}{2}$ of lot 5-----	1	15 N.	12 E.	"	"	20.00
			W. $\frac{1}{2}$ of E. $\frac{1}{2}$ of lot 6-----	"	"	"	"	"	20.00
			NE. $\frac{1}{4}$ of E. $\frac{1}{2}$ of lot 6-----	"	"	"	"	"	10.00
			SW. $\frac{1}{4}$ of W. $\frac{1}{2}$ of lot 10---	"	"	"	"	"	10.00
			E. $\frac{1}{2}$ of W. $\frac{1}{2}$ of lot 10-----	"	"	"	"	"	20.00
136	1- 7-02	" " "	W. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of NE. $\frac{1}{4}$ ---	35	10 N.	9 E.	"	"	20.00
			E. $\frac{1}{2}$ of E. $\frac{1}{2}$ of NE. $\frac{1}{4}$ of NE. $\frac{1}{4}$.	11	12 N.	10 E.	"	"	10.00
			E. $\frac{1}{2}$ of E. $\frac{1}{2}$ of NE. $\frac{1}{4}$ of NW. $\frac{1}{4}$.	35	13 N.	10 E.	"	"	10.00
			E. $\frac{1}{2}$ of E. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of NW. $\frac{1}{4}$.	"	"	"	"	"	10.00
80 139	1- 8-02	" " "	NE. $\frac{1}{4}$ of NE. $\frac{1}{4}$ of SW. $\frac{1}{4}$ ---	"	"	"	"	"	10.00
			S. $\frac{1}{2}$ of NE. $\frac{1}{4}$ of SW. $\frac{1}{4}$ ---	"	"	"	"	"	20.00
			N. $\frac{1}{2}$ of lot 2 of NW. $\frac{1}{4}$ ---	19	16 N.	8 E.	"	"	20.78
			N. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of NW. $\frac{1}{4}$ ---	"	"	"	"	"	20.00
			SE. $\frac{1}{4}$ of SE. $\frac{1}{4}$ of NW. $\frac{1}{4}$ ---	"	"	"	"	"	10.00
98	4-24-02	Central Pacific R. R. Co.	S. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of NW. $\frac{1}{4}$ ---	9	36 N.	7 W.	"	"	20.00
			S. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of NW. $\frac{1}{4}$ ---	"	"	"	"	"	20.00
			E. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of NE. $\frac{1}{4}$ ---	9	35 N.	8 W.	"	"	20.00
			E. $\frac{1}{2}$ of NE. $\frac{1}{4}$ of SE. $\frac{1}{4}$ ---	"	"	"	"	"	20.00
170	11-21-02	" " "	N. $\frac{1}{2}$ of NE. $\frac{1}{4}$ of NW. $\frac{1}{4}$ ---	21	16 N.	8 E.	"	"	20.00
			N. $\frac{1}{2}$ of S. $\frac{1}{2}$ of NE. $\frac{1}{4}$ of NW. $\frac{1}{4}$.	"	"	"	"	"	10.00
			W. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of SE. $\frac{1}{4}$ ---	17	9 N.	10 E.	"	"	20.00
			NE. $\frac{1}{4}$ of NW. $\frac{1}{4}$ of NE. $\frac{1}{4}$ ---	15	10 N.	10 E.	"	"	10.00
128	12- 5-03	Southern Pacific R. R. Co.	S. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of NE. $\frac{1}{4}$ ---	25	8 N.	16 W.	S. B.	"	20.00
103	4-28-03	Central Pacific R. R. Co.	N. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of SE. $\frac{1}{4}$ ---	25	22 N.	5 E.	M. D.	"	20.00
206	8-29-03	Central Pacific Ry. Co.	N. $\frac{1}{2}$ of NW. $\frac{1}{4}$ of SE. $\frac{1}{4}$ ---	27	12 N.	11 E.	"	"	20.00
			W. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of SE. $\frac{1}{4}$ ---	"	"	"	"	"	20.00
			S. $\frac{1}{2}$ of NW. $\frac{1}{4}$ of SW. $\frac{1}{4}$ ---	35	"	"	"	"	20.00
			N. $\frac{1}{2}$ of NE. $\frac{1}{4}$ of NE. $\frac{1}{4}$ ---	21	13 N.	11 E.	"	"	20.00
			SW. $\frac{1}{4}$ of NE. $\frac{1}{4}$ of NE. $\frac{1}{4}$ ---	"	"	"	"	"	10.00

LIST OF TRACTS OF LESS THAN A REGULAR FORTY-ACRE TRACT OF A GOVERNMENT-SURVEY LOT SUBDIVISION OF LAND, ETC.—Continued

Pat- ent No.	Date	Grantee	Subdivision	Sec.	Twp.	Rge.	Mer.	State	Acres
206	8-29-03	Central Pacific Ry.	W. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of NE. $\frac{1}{4}$ ---	21	13 N.	11 E.	M. D.	Calif..	20.00
			E. $\frac{1}{2}$ of NE. $\frac{1}{4}$ of NW. $\frac{1}{4}$ ---	29	"	"	"	"	20.00
			W. $\frac{1}{2}$ of NW. $\frac{1}{4}$ of NW. $\frac{1}{4}$ ---	"	"	"	"	"	20.00
208	9-19-03	" " "	E. $\frac{1}{2}$ of E. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of NE. $\frac{1}{4}$ ---	11	12 N.	10 E.	"	"	10.00
			N. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of NE. $\frac{1}{4}$ ---	29	13 N.	10 E.	"	"	20.00
			SE. $\frac{1}{4}$ of SW. $\frac{1}{4}$ of NE. $\frac{1}{4}$ ---	"	"	"	"	"	10.00
			N. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of NW. $\frac{1}{4}$ ---	"	"	"	"	"	20.00
210	10-29-03	Central Pacific R. R. Co.	W. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of SE. $\frac{1}{4}$ ---	1	9 N.	9 E.	"	"	20.00
211	11- 4-03	Central Pacific Ry. Co.	E. $\frac{1}{2}$ of E. $\frac{1}{2}$ of NE. $\frac{1}{4}$ of NE. $\frac{1}{4}$ ---	11	11 N.	10 E.	"	"	10.00
109	6-17-04	Central Pacific R. R. Co.	N. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of NE. $\frac{1}{4}$ ---	29	33 N.	5 W.	"	"	20.00
			N. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of NE. $\frac{1}{4}$ ---	"	"	"	"	"	20.00
			E. $\frac{1}{2}$ of E. $\frac{1}{2}$ of NE. $\frac{1}{4}$ of SE. $\frac{1}{4}$ ---	"	"	"	"	"	10.00
110	6-21-04	" " "	SE. $\frac{1}{4}$ of NW. $\frac{1}{4}$ of NW. $\frac{1}{4}$ ---	29	32 N.	5 W.	"	"	10.00
			E. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of NW. $\frac{1}{4}$ ---	"	"	"	"	"	20.00
			N. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of NW. $\frac{1}{4}$ ---	1	36 N.	7 W.	"	"	20.00
			E. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of NE. $\frac{1}{4}$ ---	"	"	"	"	"	20.00
			W. $\frac{1}{2}$ of NE. $\frac{1}{4}$ of SW. $\frac{1}{4}$ ---	"	"	"	"	"	20.00
			W. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of SW. $\frac{1}{4}$ ---	"	"	"	"	"	20.00
			NW. $\frac{1}{4}$ of NE. $\frac{1}{4}$ of NE. $\frac{1}{4}$ ---	7	37 N.	7 W.	"	"	10.00
111	8- 1-04	" " "	N. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of NW. $\frac{1}{4}$ ---	13	32 N.	6 W.	"	"	20.00
			NE. $\frac{1}{4}$ of NW. $\frac{1}{4}$ of SE. $\frac{1}{4}$ ---	"	"	"	"	"	10.00
			S. $\frac{1}{2}$ of NW. $\frac{1}{4}$ of SE. $\frac{1}{4}$ ---	"	"	"	"	"	20.00
117	11-11-04	Central Pacific Ry. Co.	N. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of NW. $\frac{1}{4}$ ---	7	32 N.	4 W.	"	"	25.54
			S. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of SW. $\frac{1}{4}$ ---	"	"	"	"	"	25.58
			N. $\frac{1}{2}$ of NE. $\frac{1}{4}$ of SE. $\frac{1}{4}$ ---	31	36 N.	5 W.	"	"	20.00
			N. $\frac{1}{2}$ of NW. $\frac{1}{4}$ of SE. $\frac{1}{4}$ ---	"	"	"	"	"	20.00
			N. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of NE. $\frac{1}{4}$ ---	1	31 N.	6 W.	"	"	20.00
			SW. $\frac{1}{4}$ of SE. $\frac{1}{4}$ of NE. $\frac{1}{4}$ ---	"	"	"	"	"	10.00
51]			N. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of SE. $\frac{1}{4}$ ---	13	"	"	"	"	20.00
			SE. $\frac{1}{4}$ of SW. $\frac{1}{4}$ of SE. $\frac{1}{4}$ ---	"	"	"	"	"	10.00
			N. $\frac{1}{2}$ of Lot 2-----	15	"	"	"	"	19.18
			N. $\frac{1}{2}$ of NE. $\frac{1}{4}$ of NW. $\frac{1}{4}$ ---	29	"	"	"	"	20.00
			N. $\frac{1}{2}$ of S. $\frac{1}{2}$ of NE. $\frac{1}{4}$ of NW. $\frac{1}{4}$ ---	"	"	"	"	"	10.00
			W. $\frac{1}{2}$ of E. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of NW. $\frac{1}{4}$ ---	"	"	"	"	"	10.00
			W. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of NW. $\frac{1}{4}$ ---	"	"	"	"	"	20.00
			W. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of NW. $\frac{1}{4}$ ---	31	"	"	"	"	20.00
229	12- 8-04	" " "	N. $\frac{1}{2}$ of NW. $\frac{1}{4}$ of SE. $\frac{1}{4}$ ---	25	33 N.	30 E.	"	Nev--	20.00
			S. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of SE. $\frac{1}{4}$ ---	"	"	"	"	"	20.00
			W. $\frac{1}{2}$ of NW. $\frac{1}{4}$ of NE. $\frac{1}{4}$ ---	35	29 N.	33 E.	"	"	20.00
			S. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of SE. $\frac{1}{4}$ ---	31	32 N.	34 E.	"	"	20.00
118	1- 9-05	" " "	S. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of SW. $\frac{1}{4}$ ---	35	39 N.	7 W.	"	Calif--	20.00
			N. $\frac{1}{2}$ of NW. $\frac{1}{4}$ of SW. $\frac{1}{4}$ ---	"	"	"	"	"	20.00
			E. $\frac{1}{2}$ of NW. $\frac{1}{4}$ of SE. $\frac{1}{4}$ ---	"	"	"	"	"	20.00
			E. $\frac{1}{2}$ of NW. $\frac{1}{4}$ of NW. $\frac{1}{4}$ ---	11	47 N.	8 W.	"	"	20.00
			SW. $\frac{1}{4}$ of NW. $\frac{1}{4}$ of NW. $\frac{1}{4}$ ---	"	"	"	"	"	10.00
			N. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of SE. $\frac{1}{4}$ ---	35	48 N.	8 W.	"	"	20.00
			S. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of SW. $\frac{1}{4}$ ---	25	32 N.	9 W.	"	"	20.00
			S. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of SW. $\frac{1}{4}$ ---	"	"	"	"	"	20.00
139	1-19-05	Southern Pacific R. R. Co.	N. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of NE. $\frac{1}{4}$ ---	25	8 N.	16 W.	S. B.	"	20.00
239	4- 1-05	Central Pacific Ry. Co.	W. $\frac{1}{2}$ of W. $\frac{1}{2}$ of NE. $\frac{1}{4}$ of SW. $\frac{1}{4}$ ---	27	12 N.	10 E.	M. D.	"	10.00
			N. $\frac{1}{2}$ of NW. $\frac{1}{4}$ of SE. $\frac{1}{4}$ of SW. $\frac{1}{4}$ ---	"	"	"	"	"	5.00
			W. $\frac{1}{2}$ of E. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of NW. $\frac{1}{4}$ ---	33	"	"	"	"	10.00
			W. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of NW. $\frac{1}{4}$ ---	"	"	"	"	"	20.00
122	7-14-05	" " "	W. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of NW. $\frac{1}{4}$ ---	3	34 N.	8 W.	"	"	20.00
			N. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of SW. $\frac{1}{4}$ ---	5	35 N.	8 W.	"	"	20.00
			N. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of SE. $\frac{1}{4}$ ---	"	"	"	"	"	20.00
			N. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of SE. $\frac{1}{4}$ ---	"	"	"	"	"	20.00
123	10- 6-05	" " "	SW. $\frac{1}{4}$ of NW. $\frac{1}{4}$ of NE. $\frac{1}{4}$ ---	35	40 N.	9 W.	"	"	10.00
			S. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of NE. $\frac{1}{4}$ ---	"	"	"	"	"	20.00
			NW. $\frac{1}{4}$ of SW. $\frac{1}{4}$ of NE. $\frac{1}{4}$ ---	"	"	"	"	"	10.00
			S. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of NE. $\frac{1}{4}$ ---	"	"	"	"	"	20.00
			W. $\frac{1}{2}$ of NW. $\frac{1}{4}$ of NW. $\frac{1}{4}$ ---	"	"	"	"	"	20.00
124	10-25-05	" " "	SE. $\frac{1}{4}$ of NE. $\frac{1}{4}$ of NW. $\frac{1}{4}$ ---	35	40 N.	9 W.	"	"	10.00
126	6-11-06	" " "	S. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of SE. $\frac{1}{4}$ ---	29	32 N.	4 W.	"	"	20.00
			S. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of SE. $\frac{1}{4}$ ---	"	"	"	"	"	20.00
			NE. $\frac{1}{4}$ of NW. $\frac{1}{4}$ of SE. $\frac{1}{4}$ ---	31	31 N.	5 W.	"	"	10.00

LIST OF TRACTS OF LESS THAN A REGULAR FORTY-ACRE TRACT OF A GOVERNMENT-SURVEY LOT SUBDIVISION OF LAND, ETC.—Continued

Pat-ent No.	Date	Grantee	Subdivision	Sec.	Twp.	Rge.	Mer.	State	Acres
126	6-11-07	Central Pacific Ry. Co.	S. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of NW. $\frac{1}{4}$ ---	33	31 N.	5 W.	M. D.	Calif.	20.00
			S. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of NW. $\frac{1}{4}$ ---	"	"	"	"	"	20.00
			E. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of SW. $\frac{1}{4}$ ---	5	32 N.	5 W.	"	"	20.00
			W. $\frac{1}{2}$ of NE. $\frac{1}{4}$ of NW. $\frac{1}{4}$ ---	9	"	"	"	"	20.00
			S. $\frac{1}{2}$ of NW. $\frac{1}{4}$ of NW. $\frac{1}{4}$ ---	"	"	"	"	"	20.00
			N. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of NW. $\frac{1}{4}$ ---	"	"	"	"	"	20.00
			SW. $\frac{1}{4}$ of SW. $\frac{1}{4}$ of NW. $\frac{1}{4}$ ---	"	"	"	"	"	10.00
			S. $\frac{1}{2}$ of NE. $\frac{1}{4}$ of SE. $\frac{1}{4}$ ---	"	"	5 W.	"	"	20.00
52]			S. $\frac{1}{2}$ of NW. $\frac{1}{4}$ of SE. $\frac{1}{4}$ ---	"	"	"	"	"	20.00
			E. $\frac{1}{2}$ of NE. $\frac{1}{4}$ of SW. $\frac{1}{4}$ ---	"	"	"	"	"	20.00
			W. $\frac{1}{2}$ of NW. $\frac{1}{4}$ of SW. $\frac{1}{4}$ ---	"	"	"	"	"	20.00
			W. $\frac{1}{2}$ of NE. $\frac{1}{4}$ of SW. $\frac{1}{4}$ ---	23	"	"	"	"	20.00
			E. $\frac{1}{2}$ of NW. $\frac{1}{4}$ of SE. $\frac{1}{4}$ ---	"	"	"	"	"	20.00
			NW. $\frac{1}{4}$ of NW. $\frac{1}{4}$ of SE. $\frac{1}{4}$ ---	"	"	"	"	"	10.00
			NE. $\frac{1}{4}$ of NE. $\frac{1}{4}$ of NW. $\frac{1}{4}$ ---	25	"	"	"	"	10.00
			S. $\frac{1}{2}$ of N. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of NW. $\frac{1}{4}$ ---	"	"	"	"	"	10.00
			S. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of NW. $\frac{1}{4}$ ---	"	"	"	"	"	20.00
			N. $\frac{1}{2}$ of NW. $\frac{1}{4}$ of SE. $\frac{1}{4}$ ---	29	"	"	"	"	20.00
			N. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of NW. $\frac{1}{4}$ ---	29	33 N.	5 W.	"	"	20.00
			N. $\frac{1}{2}$ of NW. $\frac{1}{4}$ of SW. $\frac{1}{4}$ ---	15	32 N.	6 W.	"	"	20.00
			N. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of SW. $\frac{1}{4}$ ---	"	"	"	"	"	20.00
			N. $\frac{1}{2}$ of S. $\frac{1}{2}$ of NW. $\frac{1}{4}$ of SW. $\frac{1}{4}$ ---	"	"	"	"	"	10.00
			N. $\frac{1}{2}$ of NW. $\frac{1}{4}$ of NE. $\frac{1}{4}$ ---	27	"	"	"	"	20.00
			NW. $\frac{1}{4}$ of SE. $\frac{1}{4}$ of NW. $\frac{1}{4}$ ---	"	"	"	"	"	10.00
			NE. $\frac{1}{4}$ of SW. $\frac{1}{4}$ of NW. $\frac{1}{4}$ ---	"	"	"	"	"	10.00
			W. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of NW. $\frac{1}{4}$ ---	"	"	"	"	"	20.00
			W. $\frac{1}{2}$ of NW. $\frac{1}{4}$ of SW. $\frac{1}{4}$ ---	"	"	"	"	"	20.00
			SE. $\frac{1}{4}$ of SW. $\frac{1}{4}$ of SW. $\frac{1}{4}$ ---	"	"	"	"	"	10.00
			W. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of SW. $\frac{1}{4}$ ---	"	"	"	"	"	20.00
			E. $\frac{1}{2}$ of NE. $\frac{1}{4}$ of NE. $\frac{1}{4}$ ---	33	"	"	"	"	20.00
			N. $\frac{1}{2}$ of N. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of NE. $\frac{1}{4}$ ---	31	33 N.	6 W.	"	"	10.00
			S. $\frac{1}{2}$ of NE. $\frac{1}{4}$ of SE. $\frac{1}{4}$ ---	"	"	"	"	"	20.00
			S. $\frac{1}{2}$ of N. $\frac{1}{2}$ of NW. $\frac{1}{4}$ of SE. $\frac{1}{4}$ ---	"	"	"	"	"	10.00
			S. $\frac{1}{2}$ of NW. $\frac{1}{4}$ of SE. $\frac{1}{4}$ ---	"	"	"	"	"	20.00
			NE. $\frac{1}{4}$ of SE. $\frac{1}{4}$ of SW. $\frac{1}{4}$ ---	31	40 N.	6 W.	"	"	10.00
			W. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of SW. $\frac{1}{4}$ ---	"	"	"	"	"	20.00
			W. $\frac{1}{2}$ of NE. $\frac{1}{4}$ of NW. $\frac{1}{4}$ ---	19	47 N.	6 W.	"	"	20.00
			S. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of NE. $\frac{1}{4}$ ---	29	"	"	"	"	20.00
			N. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of NE. $\frac{1}{4}$ ---	19	40 N.	7 W.	"	"	20.00
			SW. $\frac{1}{4}$ of SW. $\frac{1}{4}$ of NE. $\frac{1}{4}$ ---	"	"	"	"	"	10.00
			S. $\frac{1}{2}$ of NW. $\frac{1}{4}$ of SE. $\frac{1}{4}$ ---	"	"	"	"	"	20.00
			N. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of NE. $\frac{1}{4}$ ---	35	42 N.	7 W.	"	"	20.00
			SW. $\frac{1}{4}$ of SW. $\frac{1}{4}$ of NE. $\frac{1}{4}$ ---	"	"	"	"	"	10.00
			W. $\frac{1}{2}$ of W. $\frac{1}{2}$ of SE. $\frac{1}{4}$ ---	"	"	"	"	"	40.00
			NE. $\frac{1}{4}$ of SE. $\frac{1}{4}$ of SW. $\frac{1}{4}$ ---	15	34 N.	8 W.	"	"	10.00
			E. $\frac{1}{2}$ of E. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of SW. $\frac{1}{4}$ ---	"	"	"	"	"	10.00
			W. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of NE. $\frac{1}{4}$ ---	9	35 N.	8 W.	"	"	20.00
			NE. $\frac{1}{4}$ of NW. $\frac{1}{4}$ of SW. $\frac{1}{4}$ ---	"	"	"	"	"	10.00
			S. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of SW. $\frac{1}{4}$ ---	"	"	"	"	"	20.00
			W. $\frac{1}{2}$ of NE. $\frac{1}{4}$ of SE. $\frac{1}{4}$ ---	"	"	"	"	"	20.00
			E. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of NE. $\frac{1}{4}$ ---	17	"	"	"	"	20.00
			W. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of NE. $\frac{1}{4}$ ---	"	"	"	"	"	20.00
			S. $\frac{1}{2}$ of NE. $\frac{1}{4}$ of NE. $\frac{1}{4}$ ---	25	"	"	"	"	20.00
			S. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of NE. $\frac{1}{4}$ ---	"	"	"	"	"	20.00
53]			N. $\frac{1}{2}$ of NW. $\frac{1}{4}$ of SW. $\frac{1}{4}$ ---	29	20 N.	19 E.	"	Nev.	20.00
250	10-19-06	" " "	S. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of SW. $\frac{1}{4}$ ---	"	"	"	"	"	20.00
		" " "	E. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of SW. $\frac{1}{4}$ ---	"	"	"	"	"	20.00
		" " "	SW. $\frac{1}{4}$ of SE. $\frac{1}{4}$ of SW. $\frac{1}{4}$ ---	"	"	"	"	"	10.00
128	4-2-07	" " "	W. $\frac{1}{2}$ of NE. $\frac{1}{4}$ of NW. $\frac{1}{4}$ ---	21	32 N.	5 W.	"	Calif.	20.00
		" " "	SE. $\frac{1}{4}$ of SE. $\frac{1}{4}$ of NW. $\frac{1}{4}$ ---	"	"	"	"	"	10.00
		" " "	W. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of NW. $\frac{1}{4}$ ---	"	"	"	"	"	20.00
		" " "	E. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of SW. $\frac{1}{4}$ ---	21	32 N.	6 W.	"	"	20.00
		" " "	W. $\frac{1}{2}$ of NE. $\frac{1}{4}$ of NE. $\frac{1}{4}$ ---	29	"	"	"	"	20.00
		" " "	W. $\frac{1}{2}$ of NE. $\frac{1}{4}$ of SE. $\frac{1}{4}$ ---	21	35 N.	8 W.	"	"	20.00
251	5-6-07	Central Pacific R. R. Co.	W. $\frac{1}{2}$ of NE. $\frac{1}{4}$ of NW. $\frac{1}{4}$ ---	33	11 N.	11 E.	"	"	20.00
254	9-20-07	Central Pacific Ry. Co.	N. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of SE. $\frac{1}{4}$ ---	31	11 N.	10 E.	"	"	20.00
		" " "	W. $\frac{1}{2}$ of NW. $\frac{1}{4}$ of SE. $\frac{1}{4}$ ---	11	12 N.	E.	"	"	20.00
		" " "	E. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of NE. $\frac{1}{4}$ ---	27	"	"	"	"	20.00
		" " "	NE. $\frac{1}{4}$ of SE. $\frac{1}{4}$ of NW. $\frac{1}{4}$ ---	"	"	"	"	"	10.00
		" " "	W. $\frac{1}{2}$ of NE. $\frac{1}{4}$ of SE. $\frac{1}{4}$ ---	"	"	"	"	"	20.00

LIST OF TRACTS OF LESS THAN A REGULAR FORTY-ACRE TRACT OF A GOVERNMENT-SURVEY LOT SUBDIVISION OF LAND, ETC.—Continued

Pat-ent No.	Date	Grantee	Subdivision	Sec.	Twp.	Rge.	Mer.	State	Acres
254	9-20-07	Central Pacific Ry. Co.	S. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of SE. $\frac{1}{4}$ -----	27	12 N.	10 E.	M. D.	Calif.	20.00
			SW. $\frac{1}{4}$ of SE. $\frac{1}{4}$ of SE. $\frac{1}{4}$ -----	"	"	"	"	"	10.00
			SW. $\frac{1}{4}$ of W. $\frac{1}{2}$ of lot 1 of NE. $\frac{1}{4}$.	1	15 N.	11 E.	"	"	10.00
			SE. $\frac{1}{4}$ of E. $\frac{1}{2}$ of lot 1 of NE. $\frac{1}{4}$.	"	"	"	"	"	10.00
			E. $\frac{1}{2}$ of E. $\frac{1}{2}$ of lot 4 of NE. $\frac{1}{4}$.	"	"	"	"	"	20.00
			S. $\frac{1}{2}$ of W. $\frac{1}{2}$ of lot 4 of NE. $\frac{1}{4}$.	"	"	"	"	"	20.00
			S. $\frac{1}{2}$ of NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ -----	"	"	"	"	"	20.00
			NW. $\frac{1}{4}$ of NE. $\frac{1}{4}$ of SW. $\frac{1}{4}$ -----	"	"	"	"	"	10.00
			E. $\frac{1}{2}$ of NW. $\frac{1}{4}$ of SE. $\frac{1}{4}$ -----	"	"	"	"	"	20.00
			SW. $\frac{1}{4}$ of NW. $\frac{1}{4}$ of SE. $\frac{1}{4}$ -----	"	"	"	"	"	10.00
255	9-20-07	" " "	N. $\frac{1}{2}$ of N. $\frac{1}{2}$ of NW. $\frac{1}{4}$ of SW. $\frac{1}{4}$.	21	11 N.	10 E.	"	"	10.00
			E. $\frac{1}{2}$ of W. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of NE. $\frac{1}{4}$.	27	12 N.	10 E.	"	"	10.00
			S. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of SE. $\frac{1}{4}$ of SW. $\frac{1}{4}$.	"	"	"	"	"	5.00
			E. $\frac{1}{2}$ of W. $\frac{1}{2}$ of NW. $\frac{1}{4}$ of SE. $\frac{1}{4}$.	"	"	"	"	"	10.00
0	4-1-09	" " "	NW. $\frac{1}{4}$ of NW. $\frac{1}{4}$ of SE. $\frac{1}{4}$ -----	31	40 N.	6 W.	"	"	10.00
			W. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of NW. $\frac{1}{4}$ of SE. $\frac{1}{4}$.	"	"	"	"	"	5.00
			W. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of SE. $\frac{1}{4}$ of SW. $\frac{1}{4}$.	"	"	"	"	"	5.00
			SE. $\frac{1}{4}$ of SE. $\frac{1}{4}$ of SE. $\frac{1}{4}$ -----	"	"	"	"	"	10.00
			E. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of SE. $\frac{1}{4}$ of SE. $\frac{1}{4}$.	"	"	"	"	"	5.00
			E. $\frac{1}{2}$ of NE. $\frac{1}{4}$ of SE. $\frac{1}{4}$ of SE. $\frac{1}{4}$.	"	"	"	"	"	5.00
257	5-11-09	" " "	E. $\frac{1}{2}$ of E. $\frac{1}{2}$ of W. $\frac{1}{2}$ of SW. $\frac{1}{4}$.	27	15 N.	13 E.	"	"	20.00
131	10-11-09	" " "	N. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of SW. $\frac{1}{4}$ of NE. $\frac{1}{4}$.	19	40 N.	7 W.	"	"	5.00
54] 267	2-3-11	" " "	N. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of SW. $\frac{1}{4}$ -----	17	20 N.	19 E.	"	Nev	20.00
			W. $\frac{1}{2}$ of NW. $\frac{1}{4}$ of SE. $\frac{1}{4}$ -----	"	"	"	"	"	20.00
			E. $\frac{1}{2}$ of NE. $\frac{1}{4}$ of SE. $\frac{1}{4}$ -----	"	"	"	"	"	20.00
			SW. $\frac{1}{4}$ of NE. $\frac{1}{4}$ of SE. $\frac{1}{4}$ -----	"	"	"	"	"	10.00
			SW. $\frac{1}{4}$ of SE. $\frac{1}{4}$ of SW. $\frac{1}{4}$ -----	"	"	"	"	"	10.00
			SE. $\frac{1}{4}$ of SW. $\frac{1}{4}$ of SE. $\frac{1}{4}$ -----	"	"	"	"	"	10.00
161	2-10-15	Southern Pacific R. R. Co.	NE. $\frac{1}{4}$ of NW. $\frac{1}{4}$ of NE. $\frac{1}{4}$ -----	23	7 N.	13 W.	S. B.	Calif.	10.00
272	6-1-15	Central Pacific R. R. Co.	N. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of NW. $\frac{1}{4}$ -----	23	16 N.	7 E.	M. D.	"	20.00
273	6-26-15	Central Pacific Ry. Co.	NE. $\frac{1}{4}$ of SW. $\frac{1}{4}$ of NW. $\frac{1}{4}$ -----	31	18 N.	12 E.	"	"	10.00
			NE. $\frac{1}{4}$ of NE. $\frac{1}{4}$ of SW. $\frac{1}{4}$ -----	"	"	"	"	"	10.00
			W. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of SW. $\frac{1}{4}$ -----	"	"	"	"	"	17.65
			SE. $\frac{1}{4}$ of SW. $\frac{1}{4}$ of SW. $\frac{1}{4}$ -----	"	"	"	"	"	10.00
			N. $\frac{1}{2}$ of NW. $\frac{1}{4}$ of SE. $\frac{1}{4}$ -----	"	"	"	"	"	20.00
			E. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of SE. $\frac{1}{4}$ -----	"	"	"	"	"	20.00
134	12-29-15	" " "	SE. $\frac{1}{4}$ of NW. $\frac{1}{4}$ of SW. $\frac{1}{4}$ -----	9	35 N.	8 W.	"	"	10.00
			N. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of SW. $\frac{1}{4}$ -----	"	"	"	"	"	20.00
165	1-13-16	Southern Pacific R. R. Co. (See last item on page 12 (55)).	E. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of NW. $\frac{1}{4}$ -----	13	9 N.	21 E.	S. B.	"	20.00
			N. $\frac{1}{2}$ of NW. $\frac{1}{4}$ of NW. $\frac{1}{4}$ -----	21	"	"	"	"	20.00
			S. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of NW. $\frac{1}{4}$ -----	"	"	"	"	"	20.00
			NW. $\frac{1}{4}$ of NW. $\frac{1}{4}$ of NW. $\frac{1}{4}$ -----	25	"	"	"	"	10.00
			S. $\frac{1}{2}$ of NE. $\frac{1}{4}$ of NW. $\frac{1}{4}$ -----	"	"	"	"	"	20.00
280	5-16-16	Central Pacific R. R. Co.	E. $\frac{1}{2}$ of NW. $\frac{1}{4}$ of NE. $\frac{1}{4}$ -----	7	17 N.	8 E.	M. D.	"	20.00
284	9-26-16	Central Pacific Ry. Co.	N. $\frac{1}{2}$ of NW. $\frac{1}{4}$ of NW. $\frac{1}{4}$ -----	11	17 N.	8 E.	"	"	20.00
			SW. $\frac{1}{4}$ of NW. $\frac{1}{4}$ of NW. $\frac{1}{4}$ -----	"	"	"	"	"	10.00
			SE. $\frac{1}{4}$ of NW. $\frac{1}{4}$ of NE. $\frac{1}{4}$ -----	"	"	"	"	"	10.00
			N. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of SE. $\frac{1}{4}$ -----	31	18 N.	8 E.	"	"	20.00
			N. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of SE. $\frac{1}{4}$ -----	"	"	"	"	"	20.00
137 & 135	4-30-19	" " "	E. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of SW. $\frac{1}{4}$ -----	35	33 N.	7 W.	"	"	20.00
291	9-28-16	" " "	N. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of NE. $\frac{1}{4}$ -----	33	29 N.	31 E.	"	Nev	20.00
293	2-7-19	Central Pacific R. R. Co.	W. $\frac{1}{2}$ of NW. $\frac{1}{4}$ of NE. $\frac{1}{4}$ -----	7	17 N.	8 E.	"	Calif.	20.00

LIST OF TRACTS OF LESS THAN A REGULAR FORTY-ACRE TRACT OF A GOVERNMENT-SURVEY LOT SUBDIVISION OF LAND, ETC.—Continued

Pat-ent No.	Date	Grantee	Subdivision	Sec.	Twp.	Rge.	Mer.	State	Acres
137	4-30-19	Central Pacific Ry. Co.	N. $\frac{1}{2}$ of SE. $\frac{1}{2}$ of SW. $\frac{1}{4}$ ---	27	33 N.	5 W.	M. D.	Calif..	20.00
			N. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of SW. $\frac{1}{4}$ ---	"	"	"	"	"	20.00
			E. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of SW. $\frac{1}{4}$ ---	35	33 N.	7 W.	"	"	20.00
			S. $\frac{1}{2}$ of lot 6-----	7	46 N.	9 W.	"	"	20.00
173	1-29-20	Southern Pacific R. R. Co.	S. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of SE. $\frac{1}{4}$ ---	25	5 N.	10 W.	S. B.	"	20.00
297	3-10-20	Central Pacific Ry. Co.	N. $\frac{1}{2}$ of NE. $\frac{1}{4}$ of SW. $\frac{1}{4}$ ---	7	14 N.	11 E.	M. D.	"	20.00
139	5- 6-21	" " "	SW. $\frac{1}{4}$ of NE. $\frac{1}{4}$ of SW. $\frac{1}{4}$ ---	"	"	"	"	"	10.00
			W. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of NW. $\frac{1}{4}$ ---	1	45 N.	7 W.	"	"	20.00
			E. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of NW. $\frac{1}{4}$ ---	"	"	"	"	"	20.00
			E. $\frac{1}{2}$ of NE. $\frac{1}{4}$ of NW. $\frac{1}{4}$ ---	35	48 N.	7 W.	"	"	20.00
			E. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of NW. $\frac{1}{4}$ ---	"	"	"	"	"	20.00
			S. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of NW. $\frac{1}{4}$ ---	"	"	"	"	"	20.00
			SW. $\frac{1}{4}$ of SE. $\frac{1}{4}$ of NW. $\frac{1}{4}$ ---	"	"	"	"	"	10.00
			NW. $\frac{1}{4}$ of SW. $\frac{1}{4}$ of NW. $\frac{1}{4}$ ---	"	"	"	"	"	10.00
			NW. $\frac{1}{4}$ of NE. $\frac{1}{4}$ of NE. $\frac{1}{4}$ ---	7	33 N.	8 W.	"	"	10.00
			E. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of SW. $\frac{1}{4}$ ---	17	"	"	"	"	20.00
301	6-16-22	" " "	S. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of SE. $\frac{1}{4}$ ---	7	12 N.	10 E.	"	"	20.00
			SW. $\frac{1}{4}$ of NE. $\frac{1}{4}$ of NE. $\frac{1}{4}$ ---	31	14 N.	"	"	"	10.00
			SE. $\frac{1}{4}$ of NW. $\frac{1}{4}$ of NE. $\frac{1}{4}$ ---	"	"	"	"	"	10.00
			E. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of NE. $\frac{1}{4}$ ---	"	"	"	"	"	20.00
			SW. $\frac{1}{4}$ of SW. $\frac{1}{4}$ of NE. $\frac{1}{4}$ ---	"	"	"	"	"	10.00
			W. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of NE. $\frac{1}{4}$ ---	"	"	"	"	"	20.00
			NW. $\frac{1}{4}$ of lot 5-----	"	"	"	"	"	10.00
55]			NW. $\frac{1}{4}$ of NE. $\frac{1}{4}$ of SE. $\frac{1}{4}$ ---	21	17 N.	"	"	"	10.00
			NE. $\frac{1}{4}$ of NW. $\frac{1}{4}$ of SE. $\frac{1}{4}$ ---	"	"	"	"	"	10.00
			N. $\frac{1}{2}$ of NE. $\frac{1}{4}$ of SE. $\frac{1}{4}$ ---	17	14 N.	11 E.	"	"	20.00
			SW. $\frac{1}{4}$ of NE. $\frac{1}{4}$ of SE. $\frac{1}{4}$ ---	"	"	"	"	"	10.00
			S. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of NW. $\frac{1}{4}$ ---	31	15 N.	11 E.	"	"	20.00
302	6-26-22	" " "	S. $\frac{1}{2}$ of NE. $\frac{1}{4}$ of SW. $\frac{1}{4}$ ---	1	22 N.	26 E.	"	Nev---	20.00
			S. $\frac{1}{2}$ of NW. $\frac{1}{4}$ of SW. $\frac{1}{4}$ ---	"	"	"	"	"	20.00
Supl. 302	10-16-22	" " "	N. $\frac{1}{2}$ of NE. $\frac{1}{4}$ of SW. $\frac{1}{4}$ ---	1	"	"	"	"	20.00
			N. $\frac{1}{2}$ of NW. $\frac{1}{4}$ of SW. $\frac{1}{4}$ ---	"	"	"	"	"	20.00
141	11-6-22	" " "	N. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of SE. $\frac{1}{4}$ ---	3	22 N.	3 E.	"	Calif..	20.00
180	11-17-22	Southern Pacific R. R. Co.	W. $\frac{1}{2}$ of NE. $\frac{1}{4}$ of SW. $\frac{1}{4}$ of SW. $\frac{1}{4}$ ---	29	7 N.	13 W.	S. B.	"	5.00
			W. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of SE. $\frac{1}{4}$ ---	13	5 N.	11 W.	"	"	20.00
112	3-26-23	" " "	E. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of SW. $\frac{1}{4}$ ---	25	6 S.	1 E.	"	"	20.00
			E. $\frac{1}{2}$ of W. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of SW. $\frac{1}{4}$ ---	"	"	"	"	"	10.00
			SW. $\frac{1}{4}$ of NE. $\frac{1}{4}$ of NE. $\frac{1}{4}$ ---	35	"	"	"	"	10.00
			NW. $\frac{1}{4}$ of SE. $\frac{1}{4}$ of NE. $\frac{1}{4}$ ---	"	"	"	"	"	10.00
			S. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of NE. $\frac{1}{4}$ ---	"	"	"	"	"	20.00
114	3-30-23	" " "	N. $\frac{1}{2}$ of NE. $\frac{1}{4}$ of NE. $\frac{1}{4}$ ---	19	7 S.	4 E.	"	"	20.00
			S. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of NW. $\frac{1}{4}$ ---	15	4 S.	7 W.	"	"	20.00
			S. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of NW. $\frac{1}{4}$ ---	"	"	"	"	"	20.00
324	6-1-23	Central Pacific Ry. Co.	E. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of NE. $\frac{1}{4}$ ---	15	18 N.	8 E.	M. D.	"	20.00
			E. $\frac{1}{2}$ of lot 7-----	3	15 N.	10 E.	"	"	34.12
165	1-13-16	Southern Pacific R. R. Co.	S. $\frac{1}{2}$ of NW. $\frac{1}{4}$ of NW. $\frac{1}{4}$ ---	25	9 N.	21 E.	S. B.	"	20.00

¹ Continued from page 11 (55).

“Exhibit G”

The lands described in the following lists were involved in suits brought by the United States against Central Pacific Railway Company in the United States District Courts in California and Nevada to recover title to lands previously patented to Central Pacific Railway Company, but in the several suits alleged by the United States to have been of known mineral character at the date of patenting. This list includes only those tracts as to which the final decree in the courts affirmed title in the railway company to tracts of less area than a regular forty-acre tract or Government survey lot subdivision recognized and restored title in the United States to the remainder of such subdivisions.

Suit No.	Court	Total acres involved	Decree entered	Land awarded to C. P. Ry. Co.						Land awarded to U. S.					
				Subdivision	Sec.	Twp.	Rge.	Mer.	Acres	Subdivision	Sec.	Twp.	Rge.	Mer.	Acres
15126	Dist. Court U. S., Northern Dist. of Calif., 2nd Div.	200.00	4-25-16	E. $\frac{1}{4}$ of SW. $\frac{1}{4}$ of NE. $\frac{1}{4}$ -- W. $\frac{1}{4}$ of SE. $\frac{1}{4}$ of SW. $\frac{1}{4}$ --	23 23	33 N. "	5 W. "	M. D. "	20.00 20.00	W. $\frac{1}{4}$ of SW. $\frac{1}{4}$ of NE. $\frac{1}{4}$ -- E. $\frac{1}{4}$ of SE. $\frac{1}{4}$ of SW. $\frac{1}{4}$ --	23 23	33 N. "	5 W. "	M. D. "	20.00 20.00
15127	"	40.00	4-25-16	E. $\frac{1}{4}$ of NE. $\frac{1}{4}$ of NW. $\frac{1}{4}$ -- W. $\frac{1}{4}$ of NW. $\frac{1}{4}$ of NE. $\frac{1}{4}$ --	17 17	32 N. "	6 W. "	" "	20.00 20.00						
1042	Circuit Court U. S., 9th Circuit and Dist. of Nev. "	2,559.36	8-16-11	E. $\frac{1}{4}$ of NW. $\frac{1}{4}$ of NE. $\frac{1}{4}$ --	3	29 N.	34 E.	"	19.92	W. $\frac{1}{4}$ of NW. $\frac{1}{4}$ of NE. $\frac{1}{4}$ --	3	29 N.	34 E.	"	19.92
1058	"	22,588.77	8-16-11	N. $\frac{1}{4}$ of NE. $\frac{1}{4}$ of SW. $\frac{1}{4}$ & SE. $\frac{1}{4}$ of NE. $\frac{1}{4}$ of SW. $\frac{1}{4}$. NE. $\frac{1}{4}$ of SE. $\frac{1}{4}$ of SW. $\frac{1}{4}$ & S. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of SW. $\frac{1}{4}$. N. $\frac{1}{4}$ of NW. $\frac{1}{4}$ of SW. $\frac{1}{4}$ & SW. $\frac{1}{4}$ of NW. $\frac{1}{4}$ of SW. $\frac{1}{4}$. NW. $\frac{1}{4}$ of SW. $\frac{1}{4}$ of SW. $\frac{1}{4}$ & S. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of SW. $\frac{1}{4}$.	19	17 N.	20 E.	"	30.00	SW. $\frac{1}{4}$ of NE. $\frac{1}{4}$ of SW. $\frac{1}{4}$	19	17 N.	20 E.	"	10.00
					19	"	"	"	30.00	NW. $\frac{1}{4}$ of SE. $\frac{1}{4}$ of SW. $\frac{1}{4}$	19	"	"	"	10.00
					19	"	"	"	30.00	SE. $\frac{1}{4}$ of NW. $\frac{1}{4}$ of SW. $\frac{1}{4}$	19	"	"	"	10.00
					19	"	"	"	30.00	NE. $\frac{1}{4}$ of SW. $\frac{1}{4}$ of SW. $\frac{1}{4}$ & S. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of SW. $\frac{1}{4}$.	19	"	"	"	10.00
					21	"	"	"	30.00	N. $\frac{1}{4}$ of NW. $\frac{1}{4}$ of SW. $\frac{1}{4}$ & SE. $\frac{1}{4}$ of NW. $\frac{1}{4}$ of SW. $\frac{1}{4}$.	21	"	"	"	10.00
					21	"	"	"	30.00	NE. $\frac{1}{4}$ of SW. $\frac{1}{4}$ of SW. $\frac{1}{4}$ & S. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of SW. $\frac{1}{4}$.	21	"	"	"	10.00
					7	20 N	20 E.	"	20.00	S. $\frac{1}{4}$ of NE. $\frac{1}{4}$ of NW. $\frac{1}{4}$ --	7	20 N.	20 E.	"	20.00

[illegible]

Agreed statement as to exhibits

Filed Jun. 24, 1925

In the Supreme Court of the District of Columbia

CENTRAL PACIFIC RAILWAY COMPANY

vs.

HUBERT WORK, SECRETARY OF THE INTERIOR

et al.

}Equity No. 41241

It is agreed between counsel that the exhibits attached to the "stipulation of facts," summarized, show the following:

1. Exhibit "F," a schedule describing tracts less than 40 acres in area, patented to plaintiff company and its predecessor in interest and allied companies, between June 24, 1880, and June 1, 1923, shows 513 such tracts, divided as follows:

1 tract of 2.50 acres	2.50
12 tracts of 5 "	60.00
160 " " 10 "	1,600.00
325 " " 20 "	6,500.00
20 " " odd acreage	396.51
Total	8,559.01

The patents containing the aforesaid tracts were ninety-nine (99) in number, and were issued in the years 1880 to 1923, inclusive, as follows:

1880	2	1901	12	1916	4
1881	1	61 1902	4	1918	1
1883	1	1903	6	1919	2
1885	2	1904	5	1920	2
1892	1	1905	6	1921	1
1895	2	1906	2	1922	5
1896	13	1907	4	1923	3
1897	3	1909	3		
1898	8	1911	1		99
1899	1	1915	4		

2. Exhibit "G," a schedule of tracts patented to plaintiff but which became involved in suits brought by the United States to cancel on ground of mineral character known at date of patent, and as to which final decree affirmed title in the plaintiff to tracts less than 40 acres, restoring title to the United States as to the residue.

AWARDED TO PLAINTIFF

2 tracts of 10 acres	20.
25 " " 20 "	500.
12 " " 30 "	360.
7 " " odd acreage	106.71
	986.71

AWARD TO UNITED STATES

13 tracts of 10 acres	130.
24 " " 20 "	480.
1 " " 30 "	30.
7 " " odd acreage	96.62
	736.62

62 3. Exhibit "H" is a typical "selection list" showing plaintiff's "listings" of tracts claimed under its grant, the tracts being of whole sections, legal subdivisions of sections, and tracts less than 40 acres. Such a selection list is the basis of action in the land department. The list is examined with reference to known character, settlements, reservations, etc., i. e., as to objections, under the terms of the grant, to compliance with the railroad's request for patent. The tracts listed to which no objection appears are then entered on a "clear list."

4. Exhibits "I," "J," and "K" are typical "clear lists," on which are entered tracts which the General Land Office finds should be patented to the railroad. These lists bear certificates of examining clerks and chiefs of divisions and are approved by the commissioner. They are then transmitted to the office of the Secretary, where they are examined as to form, i. e., to see if requirements of law and the regulations are complied with, and are then approved by the Secretary. The approval is the commissioner's warrant for issuing patents. The lists described the tracts as whole sections, legal subdivisions, lots, and tracts in terms descriptive of less than 40 acres; e. g., E. $\frac{1}{2}$, NW. $\frac{1}{4}$, NW. $\frac{1}{4}$.

These exhibits were used in the trial of the case to illustrate procedure and to show that in lists prepared in the General Land Office areas of less than a minor legal subdivision were included. They can not be reproduced in form as a part of the printed transcript of record. It is agreed between counsel, the court being willing, that the originals of these exhibits may be shown to the court
63 upon argument and submission of the case.

C. F. R. OGILBY,
Attorney for Plaintiff.

C. EDWARD WRIGHT,
Attorney for Defendants.

Opinion

Filed May 7, 1925

In the Supreme Court of the District of Columbia holding an
Equity Court

CENTRAL PACIFIC RAILWAY COMPANY, A CORPORATION, plaintiff

vs.

HUBERT WORK, SECRETARY OF THE INTERIOR,
and William Spry, Commissioner of General
Land Office, defendants

In Equity No. 41241

SMITH, Acting Associate Justice.

The plaintiff on the 28th of April, 1923, filed a bill of complaint against the Secretary of the Interior and the Commissioner of the General Land Office, the defendants, praying that they be restrained and enjoined from cancelling and rejecting plaintiff's selection of the E. $\frac{1}{2}$ of the NW. $\frac{1}{4}$ of the SW. $\frac{1}{4}$ of section 5, T. 33 N., R. 41 E., M. D. M., Nevada, claimed by the plaintiff to have been granted

to it by the acts of July 1, 1862, July 2, 1864, and the acts
64 amendatory thereof.

The grant was in terms made inoperative as to all mineral lands and as to all lands which at the time the line of railroad was definitely fixed had been claimed for preemption or homestead or sold, reserved, or otherwise disposed of by the United States.

The plaintiff and its predecessors in interest have fully complied with all the terms and conditions of the grant and are admittedly entitled to a patent to all of said section 5 with the exception of such parts thereof as were expressly excluded from the grant by the acts hereinbefore mentioned.

On the 27th of September, 1915, the plaintiff duly filed its selection list in which inter alia was included all of section 5. At the time the selection list was filed no part of section 5 had been claimed for preemption or homestead or sold or otherwise disposed of by the United States, and it was prima facie established that the section was nonmineral in character. The selection list was duly filed by the plaintiff with the local land office and certified by register and receiver as correct and as containing no lands returned or denominated as mineral lands, or claimed as swamp lands, or covered by any preemption, homestead, or other valid claim, was duly transmitted along with the monthly returns of the land office to the Commissioner of the General Land Office for appropriate consideration and ultimate patenting of the lands included in the selection.

On the 8th of April, 1918, the commissioner ordered
65 "adverse proceedings" against the plaintiff as to the SW. $\frac{1}{4}$ of said section because it was charged by a special agent of the Land Office that the land in said SW. $\frac{1}{4}$ was mineral in character and contained valuable deposits of manganese.

The plaintiff made answer to that charge and under oath denied the mineral character of the NE. $\frac{1}{4}$ of the SW. $\frac{1}{4}$ of section 5 and the mineral character of the E. $\frac{1}{2}$ of the NW. $\frac{1}{4}$ of the SW. $\frac{1}{4}$ thereof, but did not deny the mineral character of the S. $\frac{1}{2}$ of the SW. $\frac{1}{4}$ or the mineral character of the W. $\frac{1}{2}$ of the NW. $\frac{1}{4}$ of the SW. $\frac{1}{4}$ of said section. That answer apparently brought about an investigation by a special agent of the General Land Office, who reported on March 22, 1919, that he had again examined the NE. $\frac{1}{4}$ of the SW. $\frac{1}{4}$ and the E. $\frac{1}{2}$ of the NW. $\frac{1}{4}$ of the SW. $\frac{1}{4}$ and that he was unable to find any mineral in that part of the NW. $\frac{1}{4}$ of the SW. $\frac{1}{4}$ claimed by the plaintiff to be free of mineral. In view of his failure to find any mineral, the special agent recommended that adverse proceedings be vacated as to that part of the NW. $\frac{1}{4}$ of the SW. $\frac{1}{4}$. Apparently because of that report the local land office was instructed to enter judgment in accordance with the admission of the plaintiff as to the mineral character of the S. $\frac{1}{2}$ of the SW. $\frac{1}{4}$ and the W. $\frac{1}{2}$ of the NW. $\frac{1}{4}$ of the SW. $\frac{1}{4}$ and to enter a clear list as to the remainder. That instruction was received by the register and the receiver of the local land office, who reported on October 15, 1919, to the Commissioner of the General Land Office that they had clear listed the NE. $\frac{1}{4}$ of the SW. $\frac{1}{4}$ and the E. $\frac{1}{2}$ of the NW. $\frac{1}{4}$ of the SW. $\frac{1}{4}$ of section 5 and that
66 judgment by default had been entered against the plaintiff as to the S. $\frac{1}{2}$ of the SW. $\frac{1}{4}$ and the W. $\frac{1}{2}$ of the NW. $\frac{1}{4}$ of the SW. $\frac{1}{4}$.

The Commissioner of the General Land Office did not clear list or issue a patent for the NE. $\frac{1}{4}$ of the SW. $\frac{1}{4}$ or for the E. $\frac{1}{2}$ of the NW. $\frac{1}{4}$ of the SW. $\frac{1}{4}$ of section 5 and permitted the report to remain on his files without action until July 10, 1922. On that date, ignoring the report of the special agent that he was unable to find any mineral in the NE. $\frac{1}{4}$ of the SW. $\frac{1}{4}$ or the E. $\frac{1}{2}$ of the NW. $\frac{1}{4}$ of the SW. $\frac{1}{4}$, the commissioner held the entire NW. $\frac{1}{4}$ of the SW. $\frac{1}{4}$ for cancellation and ruled in effect that plaintiff's failure to answer the special agent's charge that the W. $\frac{1}{2}$ of the NW. $\frac{1}{4}$ of the SW. $\frac{1}{4}$ was mineral fixed the status of the entire NW. $\frac{1}{4}$ of the SW. $\frac{1}{4}$ as mineral notwithstanding the fact that the E. $\frac{1}{2}$ thereof was proven and found to be nonmineral and that he, himself, had ordered it to be clear listed. That ruling of the Commissioner of the Land Office was based on a decision of the Department of the Interior in another case in which it was held that a railroad selector could not be permitted to select part of a 40-acre subdivision as nonmineral if the railroad admitted that the rest of it was mineral, inasmuch as to allow such a subdivision would permit an unofficial subdivision into lots.

Upon this statement of what appears to be the admitted facts in the case, the court is called upon to determine whether the predecessor of the plaintiff on compliance with the terms of the congressional grant did or did not acquire a title and the right to all lands in section 5 which were not mineral in character and which

67 had not been sold, reserved or otherwise disposed of by the United States and to which no claim of preemption or homestead had attached at the time the line of the railroad was definitely fixed. It is the court's opinion that the predecessor of the plaintiff did acquire such right and title and that at the time the plaintiff filed its selection list, that that right and title had passed to and was vested in the plaintiff. To hold otherwise would simply mean the reading into the statutory grant or contract a condition or reservation not therein specified. If Congress intended to reserve out of the grant the whole of a 40-acre subdivision in case part of it was mineral, Congress could have so declared. The statutory grant not having so provided, the courts cannot amend it and must construe it as it was finally passed. Congress must be presumed to have meant neither more nor less than what it said in plain and unambiguous language, and as the court sees it, there is no more legal justification for excluding from the grant an entire 40 acre subdivision because of the presence of mineral in half of it than there would be for excluding a quarter section or a whole section because of the presence of mineral in half thereof.

If the contention of the Government be sound, just what is to become of the nonmineral part of the NW. $\frac{1}{4}$ of the SW. $\frac{1}{4}$ after the mineral part thereof has been disposed of as prescribed by law? If the nonmineral part of the NW. $\frac{1}{4}$ of the SW. $\frac{1}{4}$ cannot be patented to the plaintiff, by what process of sound reasoning can it be patented to somebody else, and if it can be patented to somebody else, why not to the plaintiff to whose predecessor in interest it was granted? Half of the track is clearly nonmineral and half of it mineral; how then can it be said that the whole tract

68

must be regarded as mineral rather than as nonmineral? If it be proper to say that the whole piece is mineral because half of it is mineral, is it not equally correct to say that the whole subdivision is nonmineral because half of it is nonmineral?

Counsel for the Government admits that the nonmineral fraction of the NW. $\frac{1}{4}$ of the SW. $\frac{1}{4}$ can be disposed of by the Government after it has been officially declared to be a lot and given its appropriate number. If it can be so disposed of then why not give it a lot number and recognize the rights of the plaintiff and the terms of the grant?

But however that may be, for 44 years the Department of the Interior has approved many lists embracing tracts less than 40 acres in extent, thereby establishing a long-continued administrative practice and an interpretation of the statutes here involved which ought not to be disturbed at this late day. Oregon, etc., *R. R. Co. v. Puckett*, 39 L. D. 169; *Cent. P. R. Co. v. DeRego*, 39 L. D. 288; *Victor v. So. P. R. Co.* 43 L. D. 325; *So. Pac. R. R.*, 46 L. D. 279. To disregard that practice and that interpretation would result in clouding titles and bring about endless confusion, with no resulting benefit other than the doubtful one of simplifying administration and the returning to the public domain of lands which may have been unwisely granted.

69 Counsel for the department argues that a regulation of the Secretary of the Interior, providing that, in the selection of lands under railroad land grants, a part only of a minor legal subdivision shall not be assigned unless the rest of it be also assigned in the same selection list is not an arbitrary abridgment or obstruction of the right of selection. *So. Pacific Ry. Co. v. Fall*, 257 U. S. 460. That argument is sound as to lands which the law authorizes the grantees to select to make good "losses"; that is to say, lands excepted out of the original grant and to which no title is given by the grant. It is not sound as to lands to which the grantee acquired title by an express statutory contract. In other words, the right to acquire title is subject to reasonable regulation by the department, and as lieu selections stand on the same basis as the right to purchase or enter they are subject to reasonable regulation. The curtailment of the right to select for the acquisition of a title is one thing and the curtailment of a title which has vested is something else.

The Secretary's power to supervise does not clothe him with any discretion to enlarge or curtail the rights of the grantee or to substitute his judgment for the will of Congress as manifested in the granting act. *Payne v. Cent. Pacific Ry. Co.*, 255 U. S. 228, 236. His attempt to cancel a valid selection of lands granted to plaintiff's predecessor amounted to an unauthorized exercise of power and casts a cloud upon plaintiff's title which warrants the relief prayed for. *Ballinger v. United States*, 216 U. S. 240, 248, 249.

70 Let a decree be prepared by counsel for plaintiff and submitted to the court after service on counsel for defendants.

JAMES F. SMITH,
Acting Associate Justice.

Decree

Filed May 12, 1925

In the Supreme Court of the District of Columbia

CENTRAL PACIFIC RAILWAY COMPANY, plaintiff <i>vs.</i> HUBERT WORK, SECRETARY OF THE INTERIOR, and William Spry, Commissioner of the General Land Office, defendants	}	In Equity No. 41241
--	---	---------------------

This cause came on to be heard upon the bill of complaint of the plaintiff and the exhibits thereto, the answer of the defendants as amended, and the stipulation of facts entered into between the parties hereto by their respective counsel, and having been argued by counsel, and the court having been fully advised in the premises, it is, by the court, this 12th day of May, 1925:

Adjudged, ordered, and decreed that the defendants, as Secretary of the Interior and Commissioner of the General Land Office, respectively, their successors in office, and all persons acting or
71 claiming to act under their or either of their authority or control, be and they are hereby permanently restrained and enjoined from enforcing either or any of the certain rulings, holdings and decisions mentioned and complained of in the bill of complaint herein or from cancelling or rejecting the certain selection heretofore made by the plaintiff of the E. $\frac{1}{2}$ of the NW. $\frac{1}{4}$ of the SW. $\frac{1}{4}$ of sec. 5, T. 33 N., R. 41 E, Mount Diablo meridian, Nevada, because thereof.

And it is further adjudged, ordered, and decreed, that said defendants and their successors in office, and all persons acting or claiming to act under their or either of their authority or control, shall give full legal force and effect to the selection made by the plaintiff of the certain tract above described, excluding from any and all consideration in connection therewith the certain rulings, holdings, and decisions so complained of by the plaintiff.

JAMES F. SMITH,
Acting Justice.

And now from the foregoing decree, on the day last above written, the defendants in open court pray an appeal to the Court of Appeals of the District of Columbia, and the same is hereby allowed and the execution of the decree aforesaid is hereby stayed, pending appeal.

By the Court:

JAMES F. SMITH,
Acting Justice.

No objection as to form:

C. EDWARD WRIGHT,
Attorney for Defendants.

Assignment of Errors

Filed May 28, 1925

In the Supreme Court of the District of Columbia

CENTRAL PACIFIC RAILWAY COMPANY	}	Equity No. 41241
v.		
HUBERT WORK, SECRETARY OF THE INTERIOR, et al.		

The court erred:

1. In taking jurisdiction to review the defendants' decision rejecting the plaintiff's selection of a tract of land in controversy.

2. In not sustaining the defendants' construction of the plaintiff's granting act, to wit, that nothing in area less than a legal subdivision, unless it be a "lot" or fractional subdivision so created by survey or by segregation, is granted to the railroad.

3. In holding that under the acts of July 1, 1862, and July 2, 1864, plaintiff acquired title to all parts of a section of land not mineral, or sold, reserved, or otherwise disposed of by the United States, and as to which no claim of preemption or homestead attached, at the time of definite location of the line of the railroad, regardless of lines denoting legal subdivisions established by the Government survey of the section.

4. In not holding that the defendants had the power under Federal law, and that it was their duty, to refuse to recognize less than legal subdivisions in adjudicating selections of land made by the plaintiff.

73 5. In not holding that the suit in effect is one against the United States which has not consented in this behalf to be sued.

6. In not dismissing plaintiff's bill.

HUBERT WORK,
Secretary of the Interior.

WILLIAM SPRY,
Commissioner of the General Land Office.

By their attorney:

C. EDWARD WRIGHT.

Designation of Record

Filed May 28, 1925

In the Supreme Court of the District of Columbia

CENTRAL PACIFIC RAILWAY COMPANY	}	Equity No. 41241
v.		
HUBERT WORK, SECRETARY OF THE INTERIOR, et al.		

The clerk in making up the transcript of record in the above-entitled suit for the Court of Appeals will please to include the following:

1. Bill of complaint, exhibits thereto, and rule to show cause.
2. Answer.
3. Order amending answer.
4. Stipulation of facts omitting exhibits.
- 74 5. Agreed statement as to exhibits.
6. Opinion of court.
7. Decree and notation of appeal.
8. Assignment of errors.
9. This designation.

C. EDWARD WRIGHT,
Attorney for Defendants and Appellants.

Service acknowledged May 28, 1925.

C. F. R. OGILBY,
Attorney for Plaintiff.

Additional designation of record

Filed June 24, 1925

In the Supreme Court of the District of Columbia

CENTRAL PACIFIC RAILWAY COMPANY	}	Equity No. 41,241
<i>vs.</i>		
HUBERT WORK, SECRETARY OF THE INTERIOR, ET AL.		

The clerk will please include in the transcript of the record for the Court of Appeals in the above-entitled case the following:

1. Exhibit "F" attached to the stipulation of facts filed in the above-entitled cause on the 5th day of May, 1925.
- 75 2. Exhibit "G" attached to the aforesaid stipulation of facts filed in the above-entitled cause on the 5th day of May, 1925.

C. F. R. OGILBY,
Attorney for Plaintiff and Appellee.

Service of a copy hereof acknowledged this 23rd day of June, 1925.

C. EDWARD WRIGHT,
Attorney for Defendants.

76 Supreme Court of the District of Columbia

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, Morgan H. Beach, clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 75, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copies of which are made part of this transcript, in cause No. 41241 in equity, wherein Central Pacific Railway Company, a corporation, is plaintiff, and Hubert Work, Secretary of the Interior, et al., are defendants, as the same remains upon the files and of record in said court.

In testimony whereof I hereunto subscribe my name and affix the seal of said court at the city of Washington, in said District, this 6th day of November, 1925.

[SEAL.]

MORGAN H. BEACH,
Clerk.

[Indorsement on cover:] District of Columbia Supreme Court. No. 4392. Hubert Work, Secy., &c., et al., appellants, vs. Central Pacific Railway Company, a corporation. Court of Appeals, District of Columbia. Filed Nov. 11, 1925. Henry W. Hodges, Clerk.

○

COURT OF APPEALS
DISTRICT OF COLUMBIA
FILED

JAN 15 1926

No. 4392

Henry M. Hodges
CLERK

In the Court of Appeals of the District of Columbia

JANUARY TERM, 1926

HUBERT WORK, SECRETARY OF THE INTERIOR, AND
WILLIAM SPRY, COMMISSIONER OF THE GENERAL
LAND OFFICE, APPELLANTS

v.

CENTRAL PACIFIC RAILWAY COMPANY, A CORPORA-
TION, APPELLEE

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF
COLUMBIA

BRIEF AND ARGUMENT FOR APPELLANTS

D. V. HUNTER,
O. H. GRAVES,
Attorneys for Appellants.

COURT OF APPEALS
DISTRICT OF COLUMBIA
FILED

JAN 15 1926

No. 4382

Henry M. Hodges
CLERK

**In the Court of Appeals of the District
of Columbia**

JANUARY TERM, 1926

**HUBERT WORK, SECRETARY OF THE INTERIOR, AND
WILLIAM SPRY, COMMISSIONER OF THE GENERAL
LAND OFFICE, APPELLANTS**

v.

**CENTRAL PACIFIC RAILWAY COMPANY, A CORPORA-
TION, APPELLEE**

**APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF
COLUMBIA**

BRIEF AND ARGUMENT FOR APPELLANTS

**D. V. HUNTER,
O. H. GRAVES,**
Attorneys for Appellants.

INDEX

	Page
Statement-----	1
The facts-----	1
Argument-----	12
I. No authority by law-----	13
II. (A) No established practice-----	20
(B) No rule of property-----	23
III. Errors are apparent-----	26
IV. The real issue-----	27
Conclusion-----	28

TABLE OF CASES

<i>Barden v. Northern Pacific R. R. Co.</i> (154 U. S. 288, 332)-----	17
<i>Brown's Lessee v. Clements et al.</i> (3 How. 650, 668)-----	14
<i>Burke v. Southern Pacific R. R. Co.</i> (234 U. S. 669-711)-----	16, 26
<i>Cope v. Cope</i> (137 U. S. 682, 686)-----	19
<i>Deseret Salt Company v. Tarpey</i> (142 U. S. 241-254)-----	17, 24
<i>Howe v. Parker</i> (190 Fed. 738, 760)-----	25
<i>Northern Pacific Ry. Co. v. Soderberg</i> (188 U. S. 526, 536)-----	16, 24
<i>Rodgers v. United States</i> (185 U. S. 88)-----	19
<i>Southern Pacific R. R. Co. v. Lane</i> (49 App. D. C. 241, 243)---	18
<i>Southern Pacific R. R. Co. v. Fall</i> (257 U. S. 460, 465)-----	18, 28
<i>Webster v. Fall</i> (266 U. S. 507, 511)-----	22

LAND DECISIONS CITED

<i>Central Pacific R. R. Co. v. DeRego</i> (39 L. D. 288)-----	21
<i>Harte, James H.</i> (33 L. D. 53)-----	23
<i>Instructions</i> (19 L. D. 21)-----	23
<i>Instructions</i> (24 L. D. 321)-----	23
<i>Instructions</i> (44 L. D. 572)-----	4
<i>Oregon and California R. R. Co. v. Pucket</i> (39 L. D. 169)-----	21
<i>Southern Pacific R. R. Co.</i> (46 L. D. 279)-----	21
<i>United States v. Central Pacific R. R. Co.</i> (49 L. D. 303)-----	28
<i>Victor Portland Cement Co. v. Southern Pacific R. R. Co.</i> (43 L. D. 325)-----	21

II

TABLE OF STATUTES

	Page
Act of May 18, 1796 (1 Stat. 464-469) -----	13
Act of May 10, 1800 (2 Stat. 73-78) -----	13
Act of Feb. 11, 1805 (2 Stat. 313, 314) -----	14
Act of Feb. 22, 1817 (3 Stat. 346) -----	14
Act of April 24, 1820 (3 Stat. 566-567) -----	14
Act of May 29, 1830 (4 Stat. 420-421) -----	14
Act of April 5, 1832 (4 Stat. 503) -----	14
Act of July 1, 1862 (12 Stat. 489) -----	1, 15, 17, 18, 23
Act of July 2, 1864 (13 Stat. 356) -----	3, 15, 17, 23
Act of July 2, 1864 (13 Stat. 365-372) -----	17
Act of July 27, 1866 (14 Stat. 292) -----	18
Act of July 9, 1870 (16 Stat. 217; Sec. 2330 R. S.) -----	15
Act of May 10, 1872 (17 Stat. 94; Sec. 2331 R. S.) -----	27

In the Court of Appeals of the District of Columbia

JANUARY TERM, 1926

**HUBERT WORK, SECRETARY OF THE INTERIOR, AND
William Spry, Commissioner of the General
Land Office, appellants**

v.

**CENTRAL PACIFIC RAILWAY COMPANY, A CORPORA-
tion, appellee**

BRIEF AND ARGUMENT FOR APPELLANTS

STATEMENT

This is an appeal by the defendants below from the decision (R. p. 37) and decree (R. p. 41) of the Supreme Court of the District of Columbia, on grounds set forth in appellants' assignment of errors (R. p. 42).

THE FACTS

The Central Pacific Railroad Company, predecessor of the Central Pacific Railway Company, the appellee in this case, was offered by the Congress of the United States, by the act of July 1,

1862 (12 Stat. 489), certain lands therein granted, in return for acceptance of said offer, and construction of a railroad line through the State of California, the territory of Nevada and elsewhere, and the free transfer of troops, mail, and munitions, and other considerations.

The lands granted were—

every alternate section of public land, designated by odd numbers, to the amount of five alternate sections per mile on each side of the said railroad on the line thereof, and within the limits of ten miles on each side of said road, not sold, reserved, or otherwise disposed of by the United States, and to which a preemption or homestead claim may not have attached, at the time the line of said road is definitely fixed: *Provided*, That all mineral lands shall be excepted from the operation of this act * * *.

(Section 3, act of July 1, 1862.)

A Commission was provided for, which was to certify to the Secretary of the Interior the completion of specified sections of the railroad, upon which certification the Secretary was directed to issue patents to the company for the lands granted, up to the point where the road then had been completed (Section 4).

The act further provided (Section 3) that the company should dispose of the lands so granted within three years after the entire road shall have been completed, or that such areas as so remained undisposed of, should be “subject to settlement

and preemption, like other lands, at a price not exceeding one dollar and twenty-five cents per acre to be paid to said company."

Maps of general location of the railroad were required to be filed with the Secretary of the Interior, who was thereupon required to cause such lands as lay within 15 miles of the line of the road to be withdrawn from preemption, private entry, and sale; and when any portion of the road shall be finally located (by maps of definite location) "the Secretary of the Interior shall cause the said lands hereinbefore granted to be surveyed and set off as fast as may be necessary for the purposes herein named," i. e., the satisfaction of the grant by issuance of patents, or sale by the Government for the use of the railroad.

By an act approved July 2, 1864 (13 Stat. 356), the Congress enlarged the land grant to ten odd-numbered sections to the mile of constructed railroad, within twenty miles, on each side of the railroad, and increased the zone to be withdrawn from preemption, sale, or entry, upon location of the route, from "fifteen" to "twenty-five" miles. This act also provided (Section 4); "and any lands granted by this act or the act to which it is an amendment shall not * * * include any government reservation, or mineral lands, or the improvements of any bona fide settler, or (on) any lands returned and denominated as mineral lands * * *."

The Central Pacific Railroad Company accepted the grant, assumed the obligations imposed thereby, filed its map of definite location in April, 1867, and a railroad was constructed through the now State of Nevada.

In September, 1915, the Central Pacific Railway Company, successor of the Central Pacific Railroad Company, filed a selection list for patenting, including, among other lands, the SW. $\frac{1}{4}$, Sec. 5, T. 33 N., R. 4 E., M. D. M., Nevada.' This tract is within 20 miles of the line of the railroad, and was shown by the company to be vacant, unappropriated land, and was averred by affidavits made in support of the selection, and pursuant to the regulations of the Interior Department, to be nonmineral in character.

In March, 1918, a charge was made by a special agent of the Land Department that the SW $\frac{1}{4}$, said Sec. 5, was mineral land, and adverse proceedings were ordered by the Commissioner of the General Land Office. The Central Pacific Railway Company was duly notified thereof, in accordance with the Secretary's regulations of February 26, 1916 (44 L. D. 572), which authorized adverse proceedings where a special agent's report makes a *prima facie* showing that the lands are mineral.

Section 5 of the regulations of February 26, 1916, provides:

The notice must also state that the charges will be accepted as true (a) unless the entryman or claimant files in the local office with-

in 30 days from receipt of notice a written denial under oath, of said charges, with an application for a hearing, (b) or submits a statement of facts rendering the charges immaterial, (c) or if he fails to appear at any hearing that may be ordered in the case.

Section 10 of these regulations provides:

If the entryman or claimant fails to deny the charges under oath and apply for a hearing, or to submit a statement of facts rendering the charges immaterial, or fails to appear at the hearing ordered without showing good cause therefor, such failure will be taken as an admission of the truth of the charges and will obviate the necessity for the Government submitting evidence in support thereof, * * *.

In May, 1918, the Central Pacific Railway Company filed answer to the notice of adverse proceedings, denying the mineral character of the NE. $\frac{1}{4}$ SW. $\frac{1}{4}$, Sec. 5, a legal subdivision of public lands, and as to another tract, described as the E. $\frac{1}{2}$ NW. $\frac{1}{4}$ SW. $\frac{1}{4}$, said Sec. 5, which is less than such legal subdivision, and requested a hearing to determine the mineral or nonmineral character of the areas described. Default was had as to the charges respecting the S. $\frac{1}{2}$ SW. $\frac{1}{4}$, Sec. 5, and the remainder of the NW. $\frac{1}{4}$ SW. $\frac{1}{4}$, said section, which the company intended to admit as mineral in character, as the W. $\frac{1}{2}$ NW. $\frac{1}{4}$ SW. $\frac{1}{4}$, Sec. 5. (Paragraph 21, bill of complaint R. p. 10.)

The special agent of the Land Department re-examined the land and reported that he found no evidences of mineral upon the NE. $\frac{1}{4}$ SW. $\frac{1}{4}$, Sec. 5, and upon the E. $\frac{1}{2}$ NW. $\frac{1}{4}$ SW. $\frac{1}{4}$, said section, and the local officers were accordingly directed by the Commissioner, on August 4, 1919, as follows:

If the railroad company by its answer admitted the mineral character of the S. $\frac{1}{2}$ and W. $\frac{1}{2}$ NW. $\frac{1}{4}$ SW. $\frac{1}{4}$, Sec. 5, you will render judgment on that admission, and enter a clear list as to the remainder of the lands. (Exhibit " B " to bill of complaint, R. p. 15.)

By " clear listing " of lands the Land Department adjudicates that no objections appear to the patenting of them to the railroad. Such lists must, however, be approved by the Secretary of the Interior.

The local officers reported on October 15, 1919, that the instructions of the Commissioner had been carried out. (Exhibit " C," appellee's bill, R. p. 15.)

No further action was taken as to the selection of the NW. $\frac{1}{4}$ SW. $\frac{1}{4}$, Sec. 5, until July 10, 1922.

In the interval, however, there came before the Secretary of the Interior an appeal by the Central Pacific Railway Company involving another selection list filed by the company, wherein adverse proceedings were had and the company sought to join issue as to the nonmineral character of parts of regular 40-acre legal subdivisions and admit the

mineral character of the remaining portions of such legal subdivisions. In a decision on that appeal rendered March 14, 1922 (R. p. 17, 18), the Secretary pointed out that an admission of mineral content of a part of a minor legal subdivision of public land required the denial of a railroad selection for the entire 40-acre tract or minor legal subdivision, saying:

For a selection list can specify no tract smaller than a subdivision (40 acres), or a lot if a subdivision, or a residue of one, has been officially lotted. These are the units, and by the same rule of public-land practice if a charge is made against a selected tract as mineral ground it runs against such a unit, and answer to the charge must deny mineral character of that unit in toto or it raises no issue. A railroad selector has never been allowed to pick out part of such a unit, alleging and proving that it is non-mineral and thus retain it, while admitting that the rest of that unit includes ground mineral in character. To do that would be to allow the selector to divide a subdivision into lots unofficially to suit his own notions and interests. See James H. Harte (33 L. D. 53) and Roman Placer Mining Claim (34 L. D. 260).

On July 10, 1922, the Commissioner held the railway company's selection for cancellation as to the entire NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ Sec. 5, citing and quoting from the Secretary's decision of March 14, 1922, *supra*

(Exhibit " E " of bill, R. p. 17), and upon appeal by the company, the Secretary, by a decision rendered March 8, 1923 (paragraph 17, bill, R. p. 7, 8), ruled as follows:

The last two contentions are based mainly on the appellant's contention that its title to the E. $\frac{1}{2}$ NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ vested on the filing of its map of definite location in 1867, and that therefore it is entitled to a patent to that tract, notwithstanding the fact that the west half of that forty-acre subdivision is mineral in character. This theory is in fatal conflict with the long-established rule that parts of minor legal subdivisions of sections can not be entered or otherwise appropriated to the exclusion of other parts thereof, except in cases where such a course is authorized by specific statutory direction, or necessary in the execution of particular laws, as is the case in statutes providing for the disposal of lands under the placer mining laws. (Sec. 3231, Revised Statutes.) And no such exception has ever been extended to the patenting of lands under railroad grants. This Department has never sanctioned the patenting of areas less than minor subdivisions under such grants except in cases where existing placer mining locations covered fractional parts of such subdivisions.

In the present case there are no such locations affecting the NW. $\frac{1}{4}$ SW. $\frac{1}{4}$, and it necessarily follows that the east half of it can not be patented to this company. ●

The decision appealed from is hereby affirmed.

A motion for rehearing was filed by the company and denied by the Secretary, whereupon the appellee brought suit in equity in the court below, averring the matters herein set forth, and prayed for a mandatory injunction commanding and requiring that the decisions by the Secretary and the Commissioner herein referred to be vacated and set aside, and that the rights secured to the company under the granting acts be recognized, respected, and given their full legal force and effect, excluding from any and all consideration, both now and hereafter, in connection with this selection, the ruling theretofore adopted which prevented the company from proving the nonmineral character of less than a legal subdivision, while admitting the mineral character of the remainder of such legal subdivision, and thereby acquiring title to such nonmineral area.

The bill of complaint averred (in paragraph 20, R. p. 9) that the practice of patenting less than 40-acre tracts to railway companies was one of long standing, and had become a rule of property. This allegation was denied by these appellants in so far as it contemplated specific approval by any Secretary of the Interior of the practice of dealing with less than 40-acre subdivisions, or lots in proper cases, and was the only issue of fact in support of which the railway company offered any proof. The proof, by stipulation admitted, is reproduced in the

record, except as to certain official selection lists, which, if the Court is willing, it has been agreed (R. p. 37) may be submitted to the court by the appellants, in whose behalf they were shown to the court below.

The learned chancellor, by an opinion rendered May 7, 1925 (R. pp. 37-40), found that the Congress had, by the granting acts of 1862 and 1864, failed to limit the grants to 40-acre legal subdivisions, and hence that the grant must be construed without reference to such subdivision; or, in effect, that the grants covered all lands within the limits specified by the act which were in fact non-mineral, without reference to the surveys. It was further found that the Land Department had for 44 years approved railway selection lists for patent in which there were areas less than minor legal subdivisions, and patents therefor had issued, and it was concluded that to now disapprove the practice so long established "would result in clouding titles and bring about endless confusion, with no resulting benefit other than the doubtful one of simplifying administration and returning to the public domain lands which may have been unwisely granted." It was further held that the rulings complained of were unauthorized by law and cast a cloud on the railway company's title, and it was directed that a decree be prepared granting the relief sought.

A decree was signed May 12, 1925 (R. p. 41), enjoining the Secretary and the Commissioner

from giving force and effect to the rulings complained of in the bill.

Appeal was noted, and the following errors assigned (R. p. 42) :

The court erred :

1. In taking jurisdiction to review the defendants' decision rejecting the plaintiff's selection of a tract of land in controversy.

2. In not sustaining the defendants' construction of the plaintiff's granting act, to wit, that nothing in area less than a legal subdivision, unless it be a " lot " or fractional subdivision so created by survey or by segregation, is granted to the railroad.

3. In holding that under the acts of July 1, 1862, and July 2, 1864, plaintiff acquired title to all parts of a section of land not mineral, or sold, reserved, or otherwise disposed of by the United States, and as to which no claim of preemption or homestead attached, at the time of definite location of the line of the railroad, regardless of lines denoting legal subdivisions established by the Government survey of the section.

4. In not holding that the defendants had the power under Federal law, and that it was their duty, to refuse to recognize less than legal subdivisions in adjudicating selections of land made by the plaintiff.

5. In not holding that the suit in effect is one against the United States which has not consented in this behalf to be sued.

6. In not dismissing plaintiff's bill.

ARGUMENT

The facts clearly disclose that the fundamental question presented is whether the appellants were acting in excess of their authority in denying to the appellee company its alleged right to a patent for a part of a legal subdivision of land, upon its admission that a substantial part of that legal subdivision was mineral, and undeniedly excluded from the grant. The bill of complaint proceeds upon the theory that an illegal requirement is being made of the appellee, which the court is asked to set aside and to require these appellants to refrain from enforcing against it.

Two bases therefor appear to have been urged. First, that the Central Pacific Railway Company and its predecessor acquired title to all lands within odd sections of surveyed lands on each side of the constructed line of the railroad which are in fact nonmineral, without regard for units of survey and disposals, provided for by the laws of the United States relating to the surveys and disposals of public lands. The second line of defense is that if the grant contemplated identification and classification of lands within the place limits prescribed, and the patenting thereof to the company in terms of *legal* subdivisions, nevertheless a practice to the contrary of long years' standing has become a rule of property, with the force and effect of law, which precludes the application of the original provisions of the law against this appellee at this time.

It is confidently believed by appellants that each of these propositions is unsound, and that both appellee and the learned court below have fallen into error on fundamental matters which renders their conclusions incorrect, and that proper understanding of these primary matters amply sustains the actions of these appellants which the court has been asked to review, and when so understood not only disclose that such action was correct but that jurisdiction in the matter rests exclusively in appellants.

As these matters are fundamental and lie as the bases for the actions complained of, they will be discussed generally before the specific errors assigned are separately discussed.

I

There is no authority by law for patenting to the Central Pacific Railway Company less than a legal subdivision, of surveyed land, except in special cases not arising in this suit

The administration of public land laws has, from the earliest time, been by *legal subdivisions*, i. e., by units whose size, shape, and definition have been prescribed by law.

The rectangular system of public land surveys and disposals was adopted and became a matter of law by the act of May 18, 1796 (1 Stat. 464, 469). The unit of disposal was then a section of 640 acres. By the act of May 10, 1800 (2 Stat. 73, 78), certain United States land offices were created, and the

unit which might be identified and disposed of by the United States was reduced to *half sections*. The act of February 11, 1805 (2 Stat. 313-314), prescribed with exactness the means of identifying *quarter* sections as units for identification and disposal of public lands. Thereafter, by the act of February 22, 1817 (3 Stat. 346), the Congress described the method whereby *half quarter sections* might be ascertained and become units for disposals of certain specified sections of land in each township. The half quarter section was extended to all public lands by the act of April 24, 1820 (3 Stat. 566-567), as the smallest unit for disposal. By the act of May 29, 1830 (4 Stat. 420, 421), the Congress, in an act authorizing settlers to purchase certain lands, characterized the areas which might be entered as “*legal subdivisions*,” giving an official title to public land units.

Two years later, by the act of April 5, 1832 (4 Stat. 503), the Congress provided for the disposal of *quarter quarter* sections of land, and stated how such legal subdivisions should be made. These subdivisions were prescribed by law and executive officers have no authority to go beyond the directions given by the Congress. *Brown's Lessee v. Clements et al.* (3 How. 650, 668, at p. 664).

Since then there has been no smaller legal subdivision created as a unit for the disposal of public lands generally. Exceptions exist where there are meandered streams, or other physical conditions,

or prior disposals of lands under special and irregular surveys, such as lode-mining claims; and in the case of placer-mining claims legal subdivisions of 40 acres may be subdivided into 10-acre tracts, act of July 9, 1870 (16 Stat. 217), Section 2330, Revised Statutes.

Thus, in 1862 and 1864, when the grants upon which the Central Pacific Railway Company relies were made, *the smallest legal subdivision* authorized by law was a quarter quarter section, or a lot if conditions prevented the creation of a normal quarter quarter of 40 acres. Not only was that the case but the public lands had been disposed of in terms of not less than quarter quarter sections for thirty years prior thereto.

Had there been no reference to surveys of the lands granted, in the acts of 1862 and 1864, *supra*, nevertheless the long-established practice of segregating by surveys and recordation on tract books and plats lands which, by disposal, ceased to be public lands, would undoubtedly have compelled the conclusion that the lands which passed by the railroad grants were intended to be granted and segregated from the public domain in accordance with the current practice in that respect. No other conclusion would be tenable. The grant, even though for a special and public purpose, was a disposal of public lands. As a practical proposition and a necessity, some means of identification and segregation was required. In *Burke v. Southern*

Pacific Railroad Company (234 U. S. 669–711) the Supreme Court clearly stated the law. After referring to exclusion from the granting act of July 27, 1866 (14 Stat. 292), of mineral lands and those excluded because of prior appropriations, in terms essentially the same as those in the acts of 1862 and 1864, *supra*, the Court said:

The two exclusions and the indemnity provisions made it practically imperative that there be an authoritative identification of the lands passing under the grant and of those excluded, for otherwise great uncertainty in titles, conflicting claims, and vexatious litigation would be inevitable. Appreciative of this, Congress confided the *identification* of the lands, both included and excluded, to the Land Department, of which the Secretary of the Interior is the supervising officer. (Italics supplied.)

The Congress having so committed the matter to the Land Department, it would follow that the *identification* of the lands included and excluded from the grant was intended to be made pursuant to general laws governing identifications of public lands by the Land Department, unless there was a specific provision in the law to the contrary or its purpose would be defeated by such practice. Any doubts in the matter must be resolved in favor of the Government. *Burke v. Southern Pacific Railroad Company, supra, Northern Pacific Railway v. Soderberg* (188 U. S. 526, 536).

The granting acts of 1862 and 1864 did, however, expressly refer to surveys of the lands granted and required that the railroad company make payment for such surveys. (*Deseret Salt Company v. Tarppey*, 142 U. S. 241, 254.) The granting acts, *supra*, were not for all the land within certain defined distances from the line of the railroad, but were for odd-numbered *sections*, which were not capable of identification until the line of the road had been established. The rule stated by the Supreme Court with respect to a grant to the Northern Pacific Railroad, under the act of July 2, 1864 (13 Stat. 365, 372), not in any wise materially different from the grants of 1862 and 1864, *supra*, is applicable. The Court said, in *Barden v. Northern Pacific Railroad Company* (154 U. S., 288, 332), at p. 313:

It is also true that the grant was one *in presenti* of lands to be afterwards located. From the immense territory from which the sections were to be taken, it could not be known where they would fall until the line of the road was established; then the grant attached to them, subject to certain specified exceptions; that is, the sections, *or parts of sections*, which had been previously granted, sold, reserved, occupied by homestead settlers, or preempted or otherwise disposed of, were excepted, and the title of its other sections or parts of sections attached as of the date of the grant so as to cut off intervening claimants (Italics supplied.)

It is true that the grant to the Northern Pacific Railroad Company referred to “ sections and *parts of sections*,” but the specific reference to parts of sections related to the granting of indemnity for lands in the designated sections which had been granted, sold, *reserved*, occupied by homestead settlers, or preempted or otherwise disposed of. The grant to the Central Pacific Railroad Company contained the same exceptions and provided (section 7, act of 1862) that the Secretary of the Interior should “ cause the lands heretofore granted to be surveyed and set off as fast as may be necessary for the purpose herein named,” i. e., conveyance to the railroad company, or if not sold by the company within three years from completion of the road, as required by section 3 of the act of 1862, to be sold for the benefit of the railroad under the settlement and preemption laws “ like other lands.” That is to say, to be disposed of by *legal* subdivisions.

The matter was recently before this court (*Southern Pacific Railroad Company v. Lane*, 49 App. D. C. 241, 243) in slightly different form, involving the right of a railroad company to split legal subdivisions in making indemnity selections. The practice of the Department requiring that the integrity of legal subdivisions be respected was upheld by this court in that case, and that decision was sustained by the Supreme Court in *Southern Pacific Railroad Company v. Fall* (257 U. S. 460, 465). Construing the act of July 27, 1866 (14

Stat. 292), which is essentially the same as the acts of 1862 and 1864, in so far as the nature of the grant and the method of making it effective is concerned, the court said (p. 465) :

The grant is of sections and parts of sections to be identified by the usual survey and is accompanied by a provision, section 6, for a full survey of all lands within its exterior limits. The lands excepted are to be identified in the same way as those passing under the grant, and so of the lands which may be taken as indemnity. Thus the survey is made an element of every part of the grant. Nowhere in the granting act is there any suggestion of an intention that the grant or any part of it shall be administered otherwise than by legal subdivisions. (Italics supplied.)

Thus it seems clear that the grant to the Central Pacific Railway Company was made in contemplation of the laws which had long been in force with respect to the disposal *and patenting* of public lands, and the act must be construed in harmony therewith, if such a construction is possible. *Cope v. Cope* (137 U. S. 682, 686), *Rodgers v. United States* (185 U. S. 88).

Much will no doubt be said by appellees on the proposition that the Central Pacific Railroad Company secured no grant of *indemnity* lands to make good losses in acreage out of odd-numbered sections, because of prior disposals or reservations of such lands, or because of the mineral character

thereof, and in consequence thereof any agricultural land in a 40-acre subdivision which also contains mineralized lands ought to go to the company, since its loss will be irreparable.

The answer, full and conclusive, is that the grants to the appellee contemplated *legal subdivisions* of public lands as to the units both granted and excepted, and nothing less than such subdivisions were granted. Since less than legal subdivisions were never granted, there can be no loss. The predecessor of the appellee accepted the grant as it stood. No definite acreage was granted, and it is now too late to seek to make a better bargain through the Land Department or the courts. The United States, acting by the Congress, alone has power to enlarge the grant.

II

The instances in which split forties have been patented to appellee do not constitute a rule of property binding upon appellant

(A) At the outset, appellants assert that the lower court erred in finding that it was the prevailing practice of the Land Department for forty-four years to patent "split" forties to railroad companies in cases where portions of the lands in said forties were mineral.

The appellee established, by tabulated lists (R. pp. 25, 33), admitted by stipulation (R. p. 24), that *ninety-nine* patents, issued during the past *forty-four* years, contained split forties.

The array, as tabulated, seems impressive at first glance, but the record is silent as to whether there were segregation surveys or subdivisions under the placer mining laws of the remaining parts of these forties. Not only is that the case, but it is not stated, nor will it be, that these instances occurred except in patents which, in most cases, involved thousands of acres. Splitting of forty-acre legal subdivisions in ninety-nine patents out of three hundred and twenty-four as to the Central Pacific Railroad Company and as to at least one hundred and seventy-three patents to the Southern Pacific Railroad Company (see patent numbers shown in column 1, tabulation, R. p. 33), over a period of almost half a century, certainly fails to establish a rule, but are clearly exceptions thereto. As before stated, for aught that appears, there may have been segregations by law of the remaining parts of the forties.

The instances where district courts have rendered judgments in favor of the United States for split forties (R. p. 34) are equally indefinite. It has not been shown that the question as to whether such practice was legal was ever raised or decided by the courts.

The four decisions of the Land Department cited by the court below, in its opinion (R. p. 40), *Oregon and California Railroad Co. v. Pucket* (39 L. D. 169), *Central Pacific Railroad Co. v. DeRego* (39 L. D. 288), *Victor Portland Cement Co. v. Southern*

Pacific Railway Co. (43 L. D. 325), and *Southern Pacific Railway Co.* (46 L. D. 279), all relate to split forties, but in *none* of them was the question raised as to the legality of the entries or claims by reason of *that* fact. Consequently, the decisions are *no* authority for the proposition that the Land Department has approved, as a policy or construction of the law, the practice of breaking down *legal* subdivisions to suit its convenience. The cases merely constitute instances where consideration of other matters so held the attention of the Secretary that the question as to whether the quantum of land claimed was a *legal* subdivision was not considered. In *Webster v. Fall* (266 U. S. 507), at p. 511, the Supreme Court clearly stated the rule as to situations of this kind, saying:

The most that can be said is that the point was in the cases if anyone had seen fit to raise it. Questions which merely lurk in the record, neither brought to the attention of the court nor ruled upon, are not to be considered as having been so decided as to constitute precedents. See *New v. Oklahoma*, 195 U. S. 252, 256; *Tefft, Weller & Co. v. Munsuri*, 222 U. S. 114, 119; *United States v. More*, 3 Cr. 159, 172; *The Edward*, 1 Wheat. 261, 275-276.

Opposed to the finding of the court below are the published decisions and regulations of the Interior Department, all of which show that public lands are disposed of only by legal subdivisions. The

matter of raising an issue as to the mineral character of lands within the limits of railroad grants has always been with respect to *legal* subdivisions. See *Instructions of July 9, 1894* (19 L. D. 21), requiring railroad companies to furnish affidavits of the nonmineral character of lands "for each subdivision of forty acres," also *Instructions of April 9, 1897* (24 L. D. 321), making the same requirement as to "each and every legal subdivision." *James H. Harte* (33 L. D. 53) states the same rule.

The same rule applies to all other classes of public land claims, grants, or entries, save those in which there has been specific statutory authority for departure from the rectangular system of surveys, or the creation of minor *legal* subdivisions of less than forty acres.

(B) Let it be conceded for the moment that a practice of splitting forty-acre subdivisions in the manner contended for by the appellee herein was established from 1880. Would that constitute a "rule of property" which appellant may not now alter? Of course not.

The practice is only shown to have existed since 1880. The appellee insisted, in the trial court, that the grants to it in the acts of 1862 and 1864, *supra*, were grants *in praesenti*. That is correct. The predecessor of this appellee accepted the terms of the grant, filed its map of definite location of the road in 1867, and completed the railroad before the

practice of splitting forty-acre legal subdivisions is claimed to have commenced. *Deseret Salt Company v. Tarpey, supra.*

The predecessor of the appellee company made a contract, *in praesenti*, in reliance upon the practices prevailing when it accepted the grant, and laid out the line of its road. At that time it acquired a vested right (*Northern Pacific Railway v. Soderberg, supra*), and even the Congress could not diminish it. How, therefore, can this appellee claim the benefit, *as a matter of right*, of a practice which gives it more land than was granted to it. Neither appellee nor its predecessor assumed to build the road or did anything toward *making* or even *performing* the terms of the contract with the United States embodied in the acts of 1862 and 1864 in expectation that legal subdivisions would be broken down to satisfy its claims. How is *it* entitled to plead that a rule of property has grown up which these appellants *must* now follow. There were no expenditures ever made by appellee or its predecessor in reliance in any degree upon the alleged practice of the Land Department since 1880, of splitting forty-acre subdivisions, and if the instances where the appellee has received patents are, in fact, for such unauthorized and *illegal* subdivisions of public lands they are patents for land to which appellee was not entitled. Must these appellants, and all future Secretaries of the Interior, so long as any lands remain unpatented within the

place limits of the grant to this appellee, continue to violate the law because previous Secretaries have done so? Obviously not.

This is a far different case from one where a claimant has performed acts and made expenditures upon public lands in reliance upon *uniform, long-established precedents* and decisions of the Land Department. Such persons are protected, and the previous practice must be adhered to, *in dealing with their claims*. (*Howe v. Parker*, 190 Fed. 738, 760.) Counsel does not understand such a "rule of property" to be irrevocable as to *future* entries or claims, nor, conversely, that it has any effect upon vested rights acquired *before* the "rule" was adopted. Appellee is in the latter class.

It has been suggested by the court below that any departure from the alleged practice of splitting minor legal subdivisions would unsettle titles long since acquired. This result would not follow. First, because the appellants are only contending that they have a right to refrain from violating the law as to claims now before them and, second, because if action should be taken looking to the setting aside of patents issued for parts of forty-acre subdivisions the patentee or its assigns would have the adequate defense of *res adjudicata*, and in addition, since the action would be in the courts, the evils foreseen by the court below could properly be forestalled.

III

The errors assigned by appellants are now apparent and will only be repeated

1. The matters hereinbefore pointed out establish that the appellee has no right to less than a legal subdivision of public land. The record shows that appellee admitted the mineral character of half of a legal subdivision, and these appellants, after due consideration, and in accordance with established practices and regulations, held and decided that the entire forty acres were mineral in character. Determination of this fact is committed exclusively to the Land Department, of which the appellants are the chief executive officers. *Burke v. Southern Pacific Railroad Company, supra.*

The court erred in taking jurisdiction to review the findings of these appellants in this case.

2. The circumstances surrounding the land grants to the appellee company and the terms of the grants themselves, as hereinbefore shown, amply support the view, and in fact require that appellants maintain the integrity of legal subdivisions in administering the grants, and the court below erred in not sustaining appellants' construction of the granting acts.

3. The court erred in holding that the grants dealt with lands without regard for public land surveys and subdivisions thereof by law provided.

4. These appellants act as executive officers of the United States, and pursuant to laws which con-

trol and guide their activities. The Congress having defined *legal* subdivisions of public lands, appellants were and are without authority to create other units in substitution therefor, and have a positive duty to refuse to recognize less than legal subdivisions in adjudicating selections of land made by the appellee.

5. Since the object of this suit is to acquire lands in excess of those granted to the appellee by the granting acts of 1862 and 1864, *supra*, the United States is the party vitally to be affected, and is a necessary party to this proceeding. Since the United States has not consented to be sued, the bill should have been dismissed.

6. Each of the foregoing matters constitutes full and sufficient grounds for dismissing the bill of complaint, and the lower court erred in not entering such an order.

IV

The real issue is more than whether appellee may have the land sought

The law on this question seems to be both simple and obvious. The appellee, it is anticipated, will devote much space in its brief to demonstrating how simply and readily the subdividing of the legal subdivision in the manner desired by it can be achieved.

That is not the difficulty. The appellee company is well aware that, pursuant to section 2331, Revised Statutes, it may yet secure such areas in the

NW. $\frac{1}{4}$ SW. $\frac{1}{4}$, Sec. 5, as remain after a *segregation survey* of the mineral lands has been made. See *United States v. Central Pacific Railway Company* (49 L. D. 303). The principle sought by the company to be established in this proceeding is the real *res* sought. That principle is, that the appellee may have every acre, indeed every fraction of an acre, of agricultural land in the odd-numbered sections adjoining the line of its road bed (not otherwise appropriated, of course) without regard for legal subdivisions or the rectangular system of surveys.

If appellee's aim is any less ambitious, it is certainly an attempt, as in *Southern Pacific Railroad Company v. Fall, supra*, by the appellee company to dictate the procedure to be followed by these appellants in the conduct of their official duties, which this court and the Supreme Court of the United States, each, declined to countenance.

CONCLUSION

The case is submitted without further discussion, with the belief that the errors of the appellee and the learned court below are apparent, and that the decision below will be reversed with directions that the bill of complaint be dismissed.

Respectfully submitted.

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COURT OF APPEALS
DISTRICT OF COLUMBIA
FILED

MAR 15 1926

Harry H. Hodges.

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IN THE
Court of Appeals, District of Columbia

January Term, 1926

No. 4392.

HUBERT WORK, Secretary of the Interior, and
WILLIAM SPRY, Commissioner of the General
Land Office,

Appellants,

vs.

CENTRAL PACIFIC RAILWAY COMPANY, A Corporation,
Appellee.

BRIEF ON BEHALF OF APPELLEE

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INDEX

	PAGE
Statement of Facts.....	1
Argument	6
The Assignments of Error and Conclusion.....	35

TABLE OF CASES CITED

Barden vs. Northern Pacific R. R. Co. (154 U. S., 288, 329, 330)	18, 22
Brown's Lessees vs. Clements et al. (3 How., 650)	19
Burke vs. Southern Pacific R. R. Co. et al. (234 U. S., 669-711)	20, 21, 22
Cope vs. Cope (137 U. S., 682, 686)	24, 25
Platt vs. Union Pacific R. R. Co. (99 U. S., 48)	2
Rodgers vs. United States (185 U. S., 88)	24, 25
Southern Pacific R. R. Co vs. ~~W~~ ^E all (257 U. S., 460-465)	22, 23, 24, 34, 41
Southern Pacific R. R. Co. vs. Lane (49 App. D. C., 241, 243)	22, 23

LAND DECISIONS CITED

	PAGE
Amador City et al., vs. State of California (Copp's Mining Decisions, 109)	9, 10, 20
Caste, Nancy Ann (3 L. D., 169, 170)	28
Central Pacific Railway Co. (51 L. D., 173, advanced sheets)	40
Central Pacific R. R. Co. vs. Valentine (11 L. D., 238 at p. 246)	17
Decision of October 21, 1871 (Copp's Mining Decisions, 60)	9, 12
Departmental order dated April 22, 1880 (7 C. L. O., 36)	28
Harris, William J., (45 L. D. 174)	31, 32
Harte, James H., (33 L. D. 53)	30, 34
Instructions, dated January 14, 1867 (Copp's Mining Decisions, 239 et seq.)	11, 12
Instructions, dated June 25, 1867, (Copp's Mining Decisions, 245, 246)	11, 12
Instructions, dated May 16, 1868, (Copp's Mining Decisions, 248-251)	12
Instructions, dated August 8, 1870, (Copp's Mining Decisions, 253-260)	12, 32
Instructions, dated May 6, 1871, (Copp's Mining Decisions, 261 et seq.)	13, 15, 20, 28, 32
Instructions, dated November 24, 1871, (Copp's Mining Decisions, 301)	28
Instructions, dated June 10, 1872, (Copp's Mining Decisions, 270 et seq.)	15
Instructions, dated July 9, 1894, (19 L. D., 21)	30, 33, 34
Instructions, dated October 11, 1895, (21 L. D., 381)	33
Instructions, dated April 9, 1897, (24 L. D., 321)	30, 33, 34
Laughing Water Placer (34 L. D., 56)	31
Letter, dated November 24, 1871, (Copp's Mining Decisions, 297)	27
Snow Flake Fraction Placer, (37 L. D., 250)	31
United States vs. Central Pacific Ry. Co., (49 L. D., 303)	17, 26, 39
United States vs. Central Pacific Ry. Co., (A-2996, unreported)	17

TABLE OF STATUTES CITED

	PAGE
Act of February 11, 1805, (2 Stat., 313, 314)	19
Act of April 24, 1820, (3 Stat., 566)	19
Act of April 5, 1832, (4 Stat., 503)	16, 19, 20, 25
Act of March 3, 1853, (10 Stat., 244)	9, 10, 13
Act of July 1, 1862, (12 Stat., 489), 6, 7, 8, 11, 15, 20, 21, 22, 25, 26, 27, 35, 38, 41	
Act of July 2, 1864, (13 Stat., 356), 2, 6, 7, 8, 11, 15, 19, 20, 21, 25, 26, 27, 35, 36, 38, 41	
Act of July 4, 1866, (14 Stat., 85, 86)	8
Act of July 26, 1866, (14 Stat., 251)	8, 9, 10, 11, 12, 20, 25, 27, 36
Act of July 27, 1866, (14 Stat., 292)	21
Act of July 9, 1870, (16 Stat., 217)	10, 13, 20, 25, 27, 36
Act of May 10, 1872, (17 Stat., 92)	10, 15, 20, 25, 27, 36
Act of June 22, 1874, (18 Stat., 194)	40
Act of March 3, 1887, (24 Stat., 556)	3
Revised Statutes 2318	8
Revised Statutes 2319-2328	10
Revised Statutes 2331	10, 39
Revised Statutes 2333-2337	10

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STATEMENT OF FACTS

With certain exceptions and additions to be herein noted, the statement of facts appearing in the brief for appellants sets forth the facts appearing in the record and the question to be decided by this Court with sufficient fullness, and counsel deem it unnecessary to restate the facts here. It is deemed proper, however, to refer to certain additional facts not mentioned by counsel for the appellants, and to take exception to some of the references in the statement of facts appearing in their brief.

Counsel for the Secretary of the Interior and Commissioner of the General Land Office refer to that provision of section 3 of the Act making the grant of lands to the Central Pacific Railroad Company (Central Pacific Railway Company, successor) in which it is provided, in respect of lands not disposed of within three years after the entire road shall have been completed, that they should be "subject to settlement and pre-emption, like other lands, at a price not exceeding one dollar and twenty-five cents per acre to be paid to said company." Counsel fail, however, to refer to the fact that the mortgage covering its granted lands, given by the company, was held to be a disposition of its lands within the meaning of this clause of the Act (*Platt v. Union Pacific Railroad Company*, 99 U. S. 48). We mention this merely so that it may not be inferred that the lands involved in this suit, and similar lands, should be subject to settlement and pre-emption at a price not exceeding \$1.25 per acre to be paid to the Company. Of course no such suggestion was intended by the appellants.

On page three of their brief, the appellants quote from Section 4 of the Amendatory Act of July 2, 1864, (13 Stat., 356), referring to the lands excepted from the operation of the grant. To be fully illustrative, this quotation should be amplified by including further portions of said Section 4, so that the quotation shall read as follows:

"And any lands granted by this act or the act to which this is an amendment, shall not defeat or impair any pre-emption, homestead, swamp land, or other lawful claim, nor include any government reservation or mineral lands, or the improvements of any bona fide settler, or any lands returned and denominated as mineral lands, and the timber neces-

sary to support his said improvements as a miner or agriculturist, to be ascertained under such rules as have been or may be established by the Commissioner of the General Land Office, in conformity with the provisions of the pre-emption laws. *Provided, That the quantity thus exempted by the operation of this act and the act to which this act is an amendment, shall not exceed one hundred and sixty acres for each settler who claims as an agriculturist; and such quantity for each settler who claims as a miner, as the said Commissioner may establish by general regulation,* * * * (Italics by counsel). The proviso will be discussed later in this brief.

On page four of their brief, counsel state that the Railway Company accepted the grant, assumed the obligation imposed thereby, filed its map of definite location in April, 1867, and constructed its railroad through the now State of Nevada. It is considered only proper to refer to the further allegations of the bill of complaint, admitted by the defendants below, that all of the conditions and requirements of the grant were fully met and satisfied; that by the said granting act, the acceptance thereof, and performance of the conditions imposed thereby, a contract was created whereby the railroad company earned its right to the lands granted; that by the Act of March 3, 1887, (24 Stat., 556), the Secretary of the Interior was authorized to immediately adjust each of the railroad land grants made by Congress, and although the line of road of the Central Pacific Railroad Company has long since been fully constructed, completed and operated for more than half a century, with all of the incidental benefits to the United States, the land grant itself still remains unadjusted; and, finally, that the

grant here in question contains no provision for indemnity, so that any tract lost to the grant by virtue of any exception thereto constitutes a loss for which no indemnity can be secured by the grantee or its successor in interest. (R. pp. 3 and 4.)

The defendants below, appellants herein, in their answer to the bill of complaint admitted, substantially, all the allegations of the bill except the averments of paragraph 20, which were to the effect that in a number of instances the Department of the Interior approved clear lists of lands, which were thereupon patented to railroad companies under the land grant acts, containing less than a so-called legal subdivision, or 40 acres in area, when the fractional character was not due to existing placer mining locations, and that this had been not only a rule of property but a settled rule of Departmental practice until departed from in the decisions complained of. To those averments the Secretary and Commissioner replied that they denied said averments as referring to the Secretary of the Interior or his office, but admitted that the General Land Office, a subordinate bureau of the Department of the Interior, throughout practically the entire administration of railroad land grants, has included in railroad clear lists fractional parts of so-called legal subdivisions, to-wit, less than forty acre tracts, and that such lists had received approval in their entirety by the Secretary of the Interior, though it was naively remarked:

“without personal knowledge on the part of the Secretary that fractions of quarter quarter sections were embraced therein, and without purpose on the part of the Secretary to approve the passing of title to any tract of land smaller than said smallest legal subdivision of public land. But they deny that any

Secretary of the Interior has knowingly or advisedly sanctioned the inclusion in such a clear list of any tract less in size than the smallest legal subdivision, to wit, 40 acres, except as he impliedly sanctioned the same by approval of clear lists including such tracts. On the contrary, they aver that whenever his attention has been directed to the subject matter, the head of the Department of the Interior has forbidden it, unless in instances where said tracts have been created as 'lots' or have been carved out of a 40 acre subdivision by the survey of a mining claim covering fractional parts of such a subdivision" (R. p. 24).

Right here it may be pointed out that no proof whatsoever was offered in support of the answer of the appellants (defendants below) to said paragraph 20. On the contrary, the only proof submitted, and admitted by stipulation of both sides, was all to the effect that for years tracts less than 40 acres in area had been selected, clear listed to and approved by the Secretary of the Interior, (Exhibit "F",—R. pp. 25-33), upon the recommendation of his subordinate officials (see Exhibits "I", "J", and "K" referred to in paragraph (d) of the Stipulation of counsel, R. p. 25), and there is nothing in the record to show that in any case these fractional tracts were made fractional because of the existence of placer mining locations. Manifestly no proof could have been offered to show any *personal* knowledge or lack of *personal* knowledge of such facts on the part of any Secretary of the Interior, (most of those persons holding that office during the past fifty years being now dead), and it is respectfully submitted that such testimony, had it been offered, would have been inadmissible to contradict the written evidence of the acts of the Secretary.

With the addition of the foregoing observations, it is believed that the facts are sufficiently stated in the brief for the appellants.

ARGUMENT

The single question to be decided by this Court is whether the railroad grantee under the Act of Congress of July 1, 1862, (12 Stat., 489), as amended by the Act of July 2, 1864, (13 Stat., 356), has a right to a patent for the non-mineral portion of a forty acre subdivision of granted land, where it admits the mineral character of a part of such a tract but denies the mineral character of the remainder. Or, as stated by the appellants on page 12 of their brief "whether the appellants were acting in excess of their authority in denying to the appellee company its alleged right to a patent for a part of a legal subdivision of land, upon its admission that a substantial part of that legal subdivision was mineral, and undeniedly excluded from the grant".

The Department's ruling, here complained of, has frequently been stated in substantially the following language, namely, that "the failure of the railway company to deny that every part of a so-called legal subdivision of forty acres is mineral in character is tantamount to a confession that the entire area of such subdivision is mineral in character", notwithstanding the fact that the railway company's answer expressly denies that a part of such a tract is mineral.

The appellants, in the last clause of paragraph one of their argument (appellants' brief p. 12), state: "The bill of complaint proceeds upon the theory that an illegal requirement is being made of the appellee, which the court is asked to set aside and to require these appellants

to refrain from enforcing (sic) against it." It is true that the bill of complaint alleges that the ruling complained of, to-wit, that the failure of the railway company to deny that every part of a so-called legal subdivision of forty acres is mineral in character is tantamount to a confession that the entire area of such subdivision is mineral in character, is illegal and contrary to law, but the theory of the bill of complaint is that the certain rulings, holdings and decisions of the appellants will deprive the appellee of a valuable part of the lands granted to it by the Acts of July 1, 1862, and July 2, 1864, *supra*; that they are in violation of the statutory contract accomplished and effected by said acts of Congress; will limit and defeat the will of Congress; and will result in the unlawful taking of private property of the appellee for public use without compensation, to its irreparable loss, damage and injury, for which it is without remedy except by mandatory injunction requiring appellants to vacate such rulings complained of and to respect, recognize and give full force and effect to the rights granted and secured to the appellee under the granting acts aforesaid, (R. p. 11).

The appellee does not contend, as asserted on page 12 of appellants' brief, that the Central Pacific Railway Company and its predecessor "acquired title to all lands within odd sections of surveyed lands on each side of the constructed line of the railroad which are in fact non-mineral, *without regard for units of surveys and disposals*, provided for by the laws of the United States relating to the surveys and disposals of public lands." On the contrary, with respect to the determination of the extent of mineral claims on the granted lands the appellee relies upon the provisions of Section 4 of the amendatory act of July 2, 1864, hereinbefore quoted,

to-wit, "such quantity for each settler who claims as a miner, as the said Commissioner may establish by general regulation."

The Commissioner of the General Land Office never prescribed any general regulation concerning the extent of mineral claims as provided by the above quoted portion of said Section 4 of the amendatory act of July 2, 1864. There is, however, authority of law for patenting to the railway company less than a legal subdivision of surveyed land, if by a legal subdivision appellants mean to imply, as they argue, that there is no legal subdivision less than forty acres in extent, except a specially surveyed, fractional tract, designated as a lot.

At the date of the passage of the acts of July 1, 1862, and July 2, 1864, *supra*, there was no authority of law for the disposition of the mineral lands of the United States. By Section 5 of the act of July 4, 1866, (14 Stat., 85, 86), entitled "An Act concerning certain lands granted to the State of Nevada", it was provided "That in extending the surveys of the public lands in the State of Nevada, the Secretary of the Interior may, in his discretion, vary the lines of the subdivisions from a rectangular form, to suit the circumstances of the country; but in all cases lands valuable for mines of gold, silver, quicksilver or copper shall be reserved from sale." The last clause of this section was carried into the Revised Statutes as Section 2318, modified to read as follows: "In all cases, lands valuable for minerals shall be reserved from sale, except as otherwise expressly directed by law."

However, by Section 1 of the act of July 26, 1866, (14 Stat., 251), Congress enacted "That the mineral lands of the public domain, both surveyed and unsurveyed, are hereby declared to be free and open to exploration and occupation by all citizens of the United

States, and those who have declared their intention to become citizens, subject to such regulations as may be prescribed by law, and subject also to the local customs or rules of miners in the several mining districts, so far as the same may not be in conflict with the laws of the United States."

Section 10 of said act of July 26, 1866, further provided that wherever, prior to the passage of the act, "*upon the lands heretofore designated as mineral lands which have been excluded from survey and sale*", (Italics by counsel), there were homesteads made by qualified persons therein designated, upon which there were no valuable mines discovered, the said settlers or owners should have the right to enter the same under the homestead or pre-emption laws as therein stated. In explanation of the above quoted italicized portion of Section 10 of the act of July 26, 1866, counsel for appellee call attention to the fact that by Section 3 of the act of March 3, 1853 (10 Stat., 244), entitled "An Act to provide for the survey of public lands in California, etc.", it was provided "That none other than township lines shall be surveyed when the lands are mineral or are deemed unfit for cultivation."

By decision dated October 21, 1871, reported in Copp's Mining Decisions, p. 60, it was held that there was no authority granted by said Section 10 of the act of July 26, 1866, *supra*, for disproving the mineral character of such reserved land for the benefit of the Central Pacific Railroad grant, and the local officers at Sacramento, California, were directed to treat the land as mineral in character.

In the case of Amador City, et al., vs. State of California, decided by the Secretary of the Interior on April 28, 1873, and reported in Copp's Mining Decisions, p.

109, at page 124, Secretary Delano stated: "I regard the act of July 26, 1866, as providing an exclusive method for appropriating the mineral lands of the United States. It was the first act passed by Congress, and perhaps the first ever passed by any government which undertook to dispose of its mineral lands." After commenting upon the provisions of said act of July 26, 1866, the Secretary says further upon said page 124: "No surveys of mineral lands were *authorized* or *made* until the passage of the act of July 9, 1870, (16 Stat., 217, Sec. 16), and long after the passage of the act of 1866." (Italics by counsel.)

The act of July 26, 1866, *supra*, although it opened mineral lands to exploration and occupation, made provision for the entry and patenting of *lode* claims only. The act of July 9, 1870, *supra*, amended said act of July 26, 1866, by adding thereto six sections numbered twelve to seventeen inclusive which provided for the entry and patenting of claims "usually called placers," under like circumstances and upon similar proceedings as are provided for vein or lode claims. Section 16 of said act of July 9, 1870, repealed the above quoted portion of Sec. 3 of the act of March 3, 1853, *supra*, relating to the survey of township lines only of mineral lands, and extended the public surveys over such mineral lands.

The act of May 10, 1872, (17 Stat., 91), the provisions of which have been carried into Sections 2319-2328, 2331, and 2333-2337 of the Revised Statutes, modified and enlarged the provisions of the prior acts with respect to mining locations. Section 1 of the act re-enacted the provisions of the act of July 26, 1866, with respect to the exploration and occupation of "the mineral lands of the public domain" by providing that "all valuable mineral deposits of lands belonging to the United

States, both surveyed and unsurveyed are hereby declared to be free and open to exploration and purchase."

A circular letter of instructions, dated January 14, 1867, addressed to United States Registers and Receivers and Surveyors General, which is published in Copp's Mining Decisions, pp. 239 et seq., was prepared by the then Commissioner of the General Land Office under said act of July 26, 1866, *supra*, in which it was declared that "all the mineral lands of the United States, surveyed and unsurveyed, are laid open to 'all citizens of the United States', etc." As it was provided that all mineral lands, except coal and iron land, are excepted from the operation of the grant by said acts of July 1, 1862, and July 2, 1864, *supra*, manifestly said act of July 26, 1866, and said circular of instructions of January 14, 1867, operated upon mineral lands within the limits of railroad grants as well as outside of such limits and provided a means by which the excepted mineral lands if in lode formation might be determined and defined, a duty which, as hereinbefore stated, had been laid upon the Commissioner of General Land Office by the amendatory act of July 2, 1864, *supra*, and which duty he had failed to perform.

It was further stated by the Commissioner, in said circular of January 14, 1867, that what was embodied therein presented such views as had occurred to the office, in considering the statute, and would be followed by further instructions, as the rulings in actual cases and experience in the administration of the statute might from time to time suggest. It was found necessary to supplement this circular from time to time, and by circular dated June 25, 1867, published in Copp's Mining Decisions, pp. 245, 246, supplemental instructions were issued from which the following is quoted:

“In the preparation of forms adapted to the purchase of mineral interests, under the act of July 26, 1866, it is found necessary in connection with circular of January 14, 1867, to direct your attention to the following:

“First. Where the rules of miners do not permit ground to be occupied, except the surface of the vein or lode, the claims presented may contain *less than an acre of ground*. In such cases, as we do not, in regard to rates, deal with a fraction, the price of five dollars is to be paid for same; if the area exceeds that quantity, ten dollars; if more than two acres, fifteen dollars and so on.” (Italics by counsel.)

Attached to this circular was an abstract of the duties to be performed by the various officers and prescribed by the instructions contained in said circular of January 14, 1867.

On May 16, 1868, instructions were issued to the local officers relative to homestead claims upon lands previously reserved as mineral and excluded from survey and sale, the circular being published in Copp's Mining Decisions, pp. 248-251. As hereinbefore stated, it was held in the Commissioner's decision, dated October 21, 1871, Copp's Mining Decisions, p. 60, *supra*, that this section did not grant any authority for disproving the mineral character of reserved lands for the benefit of the railroad grant.

By circular dated August 8, 1870, approved by the Secretary of the Interior August 9, 1870, published in Copp's Mining Decisions, pp. 253-260, instructions were issued relative to the survey and entry of mining claims under the act approved July 26, 1866, *supra*, and said

amendatory act of July 9, 1870, *supra*. Attention was directed to the provision for the subdivision of forty acre subdivisions into ten acre tracts and authority given to Surveyors General to have such subdivisions made by their deputies.

By circular dated May 6, 1871, published in Copp's Mining Decisions, pp. 261 et seq., further instructions were issued for the observance of the local officers in the matter of controversies between mineral and agricultural claimants, the segregation of mineral from agricultural lands and the survey and entry of placer claims. Attention was directed, among other matters, to the fact that, by Section 12 of the amendatory act of July 9, 1870, *supra*, among other things it was provided that *legal subdivisions of forty acres* might be subdivided into *ten-acre* tracts; that the sixteenth section of said act repealed the provisions of the act of March 3, 1853, *supra*, providing for the survey of township lines only where the lands are mineral, and extended the public surveys over mineral as over agricultural lands; that it was thought that, under the operation of this law, *recognizing ten acre lots as legal subdivisions of the public lands in mining regions*, much of the difficulty theretofore experienced in proving the mineral or non-mineral character of lands might be obviated. Attention was directed to the fact that theretofore the agricultural claimant was required to establish the fact that each forty acre tract was, *as a whole*, more valuable for agricultural than for mining purposes; that, often it was found impossible to do this, for the reason that, although parties could be readily produced to testify to the fact that one-half or three-fourths of a given tract was only fit for farming, yet inasmuch as a *small fraction* of the land was inter-

sected by a gulch, ravine or lode, yielding mineral, the value of which deposit there was no means of ascertaining, the deponents would be unable to testify that the entire forty acre subdivision was of greater value for farming than for mining purposes; that, in this way, although thirty or even thirty-five acres of a forty acre tract might be shown to contain no mineral whatever, yet, on account of the known mineral character of *such small fragment*, the *bona fide* agricultural claimant was debarred from securing a title to his land.

Instructions were issued as to the examination of witnesses in order to establish clearly what portion of a forty acre tract was mineral and what portion agricultural and the character of the mineral claims. On pp. 263 and 264, directions were given that, in making a survey pursuant to the award, where placer mines existed, the subdivisions must be into ten acre lots, either in squares, ten chains on a side, or parallelograms, five chains by twenty chains, the lines thereof to be parallel and at right angles to the lines of the regular surveys. Instructions were further given that, in the case of vein or lode claims, the subdivisions into ten acre lots were *not imperative*, but that the survey in such case might be executed in such manner as would segregate the portion actually containing the mine and used as surface ground for the convenient working thereof, from the agricultural portion; and it was further provided (par. 17, page 264), that the agricultural portion should not be given a numerical designation as in the case of surveyed mineral claims, but "*will simply be described as the Fractional quarter of the quarter of section in township of range meridian, containing acres,*

the same being exclusive of the land adjudged to be mineral in said forty acre tract." (Italics by counsel.)

On June 10, 1872, the Commissioner of the General Land Office issued instructions under said act of May 10, 1872, *supra*, which are published in Copp's Mining Decisions pp. 270 et seq. In this circular the Commissioner reiterates the statement made in said circular of May 6, 1871, *supra*, that ten acre lots in mining districts should be considered and dealt with, to all intents and purposes, as legal subdivisions, and might be either in the form of squares ten by ten chains, or of parallelograms five by twenty chains. It was further provided that where such subdivisions were upon surveyed lands and conformed to legal subdivisions, they might be described, for instance, "as the SE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of NW $\frac{1}{4}$," or as the "W $\frac{1}{2}$ of the W $\frac{1}{2}$ of the SW $\frac{1}{4}$ of the NW $\frac{1}{4}$ (or N $\frac{1}{2}$ of the S $\frac{1}{2}$ of the NE $\frac{1}{4}$ of the SE $\frac{1}{4}$) of section, township, range," according as the claim was in the form of a square or a parallelogram.

Counsel for the appellee aver that the provisions of these acts relating to mining claims and the instructions contained in the circulars thereunder relate as well to mining claims *within* the exterior limits of railroad grants as to lands *without* such exterior limits, and as to lands *within* the limits of railroad grants apply as well to the *granted* odd numbered railroad sections as to the even sections *reserved* to the United States. This being so, the said acts, to the extent that they affect odd-numbered sections within the primary limits of the Central Pacific grant, are supplementary to and amendatory of the granting acts of July 1, 1862, and July 2, 1864, *supra*, and, accordingly, the company has the lawful right to secure title to subdivisions as small as ten acre tracts, and its

right thereto has been properly recognized in the approved lists and the patents based thereon set out in Exhibit "F" of the stipulation of facts (R. p. 25-33), and in the lands involved in suits brought by the United States against the appellee, a schedule of which is set out in Exhibit "G" of the stipulation of facts. (R. pp. 34, 35.)

It is fair to assume then, and counsel for appellee confidently assert that, inasmuch as the grant to the appellee is of agricultural lands, and the railway company is an agricultural claimant, the acts above-mentioned providing for the ascertainment of the extent of the mineral lands, and the regulations providing for the division of the so-called legal subdivisions of forty acres mentioned in the act of April 5, 1832 (4 Stat., 503), into mineral and agricultural tracts smaller than such forty acre subdivisions, created a unit for the disposal of public lands smaller than forty acres, and therefore counsel for appellants are in error when they assert that there has been no smaller legal subdivision than forty acres created as a unit for the disposal of public lands generally since the passage of said act of April 5, 1832, *supra*. The Commissioner of the General Land Office recognized the fact that such smaller unit was created in issuing his instructions under the mineral acts above cited, and his successors in office and the various Secretaries of the Interior who approved the clear lists upon which the patents were issued which are embraced in said Exhibit "F" undoubtedly were familiar with the practice which had grown up, and approved such lists with full knowledge of such practice, and not inadvertently and in ignorance of the fact that such clear lists contained any tract less in size than a so-called legal subdivision of forty acres, as asserted by the appellants in their amended answer to paragraph 20 of the bill of complaint. (R. 23.)

The Department, itself, in its decision dated September 21, 1922, (49 L.D. 303), applied the provisions of the mining laws above cited to a case in which the evidence all related to the mineral character of a *located* lode claim, holding that the railway company was entitled to the non-mineral land outside of such *located* lode claim, but refused to follow said decision when the evidence showed the mineral to be in lode form but unlocated, although challenged by counsel for the railway company to make such holding. See case of United States v. Central Pacific Railway Company (A-2996, unreported), departmental decision dated November 16, 1922, Carson City List 72, Serial 09024.

Commenting on the rule of property theory, it may be stated that it is not herein contended that this case is one where the company has contracted with the Government in reliance upon a long continued and uniform construction of a statute, to overturn which construction would result in damage to the contracting company, but we insist that it a case where, as stated by the Court below (R. p. 40) the Department has established "a long-continued administrative practice and an interpretation of the statutes here involved which ought not to be disturbed at this late day."

In the case of the Central Pacific R. R. Co. et al., vs. Valentine (11 L. D., 238 at p. 246), decided August 30, 1890, in passing upon the question of the jurisdiction of the Land Department over lands in the limits of railroad grants, the Secretary of the Interior held as follows:

"Now, this jurisdiction is in the Land Department, and it continues, as we have seen until the lands have been either patented or certified to, or for the use of, the railroad company. By reason of

this jurisdiction it has been the practice of that department, for many years past, to refuse to issue patents to railroad companies for lands found to be mineral in character, at any time before the date of the patent. More-over, I am informed by the officers in charge of the Mineral Division of the Land Department, that ever since the year 1867 (the date when that division was organized) it has been the uniform practice to allow and maintain mineral locations within the geographical limits of railroad grants, based upon discoveries made at any time before patent, or certification when patent is not required. This practice having been uniformly followed and generally accepted for so long a time, there should be, in my judgment, the clearest evidence of error, as well as the strongest reasons of policy and justice controlling, before a departure from it should be sanctioned. *It has, in effect, become a rule of property.*" (Italics by counsel.)

It will be observed that the above quoted portion of the Secretary's decision upholds the contention of the appellee that the mining laws and regulations hereinbefore cited apply to lands within railroad limits. The entire above extract was quoted with approval by the Supreme Court of the United States in *Barden vs. Northern Pacific Railroad Company* (154 U. S. 288), at pp. 329 and 330, in support of its ruling that "under the law the duty of determining the character of the lands granted by Congress, and stating it in instruments transferring the title of the government to the grantees, reposes in officers of the Land Department."

Counsel for the appellee have no quarrel with appel-

lants' narration of the establishment of the rectangular system of the public land surveys by the various acts of Congress enumerated in appellants' brief, and agree that Congress by the act of April 5, 1832, (4 Stat., 503), provided for the disposal of land by *quarter quarter* sections, as nearly as may be, in the same manner as was directed by the act of February 11, 1805, (2 Stat., 313-314), which prescribed the means of identifying *quarter* sections as units for identification of and disposal of the public lands. Said act of April 5, 1832, also provided that *fractional sections*, containing fewer or more than one hundred and sixty acres shall "in like manner, as nearly as may be practicable, be divided into quarter-quarter sections, under such rules and regulations as may be prescribed by the Secretary of the Treasury."

The case of *Brown's Lessee vs. Clements et al.*, (3 How. 650, 668, at p. 664), cited by appellants' counsel at this point, although decided at the December Term, 1844, after the passage of said act of April 5, 1832, construes the provisions of Section 1 of the act of April 24, 1820, (3 Stat., 566), by which surveyors general were directed and were, therefore, bound to divide fractional sections into as many *half quarter* sections as practicable, so as to preserve the most compact forms, and held that a patent which by reason of a void survey and subdivision, appropriated to one pre-emption claim what belongs to another, is void as against the owner of the latter claim. But counsel for the appellee do assert that following the passage of the amendatory act of July 2, 1864, *supra*, Congress has, by the mineral laws and regulations hereinabove cited made both the lode and placer laws applicable to the administration of railroad grants.

It is immaterial that since the passage of the act of

April 5, 1832, *supra*, there has been no smaller legal subdivision than the so-called legal subdivision of forty acres created as a unit for the disposal of public land *generally*, even if that assumption be conceded to be correct. The Commissioner of the General Land Office in his circular of May 6, 1871, *supra*, recognized a ten acre tract as a legal subdivision in the administration of the acts of Congress providing for the disposition of the mineral portion of the public domain. The lode and placer claims asserted under the mineral laws invaded all of the public lands where minerals exist, and are, therefore, generally applicable. At the date of the passage of the act of April 5, 1832, *supra*, no attention was paid to the question of mineral in the public lands; now, practically all laws providing for the disposal of public lands except mineral lands from their operation, and such mineral lands are disposable under the mineral laws only. They must first be carved out from the body of the public lands which are primarily and ordinarily surveyed and platted in forty acres in square form, leaving irregular and smaller sized bodies for disposition under what are generally called agricultural laws. Current practice with reference to mineral and railroad lands was to patent as little as two and one-half acres in adjusting conflicting claims under these grants (R. 29, Exhibit "F"). At the date of the passage of the acts of 1862 and 1864, *supra*, mineral lands were not subject to *any* form of appropriation and entry under the Federal laws. See acts of July 26, 1866, July 9, 1870, and May 10, 1872, *supra*; case of Amador City, Copp's Mining Decisions, 109, *supra*.

Counsel for the appellants quote from the decision in *Burke vs. Southern Pacific R. R. Co. et al.*, (234 U. S.

669-711) where at p. 684 the Court referred to the two exclusions and the indemnity provisions of the Southern Pacific grant as making imperative the authoritative *identification* of the lands passing under the grant, and held that Congress confided the *identification* of the lands to the Land Department, and they argue therefrom that the identification in the mind of the court was solely the identification of the lands as *oddnumbered sections*, identifiable in terms of the public surveys. In the first place it must be borne in mind that the grant to the Southern Pacific Railroad Company by the act of July 27, 1866 (14 Stat., 292), is materially different from the grant to the Central Pacific Railroad Company by said acts of July 1, 1862, and July 2, 1864, *supra*, in that the former made provision for indemnity for lands lost within the primary limits of the grant, and that the latter grant made no provisions for indemnity. A careful examination of the entire decision in the Burke case, *supra*, will show that the question of survey did not enter into the controversy considered by the court in any manner whatsoever. The lands involved were five entire sections duly patented to the railroad company, the patent containing a clause "excluding and excepting all mineral lands should any such be found in the tracts aforesaid, but this exclusion and exception, according to the terms of the statute, shall not be construed to include coal and iron lands." The case was certified to the Supreme Court of the United States by the Circuit Court of Appeals for instructions upon designated questions of law, seven in number, all of which had to do with the mineral or non-mineral character of the lands in question, and it is manifest from a reading of the entire decision that the *identification* referred to by the court was as to the mineral or non-mineral character of the lands as well as of the

sections and *parts of sections* (not legal subdivisions of sections) excluded because "granted, sold, reserved, occupied by homestead settlers, or pre-empted or otherwise disposed of."

Counsel for appellants also quote, on p. 17 of their brief, from the case of *Barden vs. Northern Pacific R. R. Co.* (154 U. S. 288), where at p. 313, the court, in referring to the lands to which the grant attached at the time the line of the road was "established" referred to the *sections* and *parts of sections* excepted from the grant, and, referring to the provision in Section 3 of the act of 1862, *supra*, providing for the sale of certain lands for the benefit of the railroad company "like other lands" assumed that this was a requirement that such lands were to be disposed of by *legal subdivisions*, that is, subdivisions of forty acres. It does not follow, however, that the parts of sections referred to in the decision in the *Barden* case, *supra*, are either necessarily or by implication subdivisions of forty acres in area. As in the *Burke* case, *supra*, the question before the court in the *Barden* case was the mineral or non-mineral character of lands involved, the allegations of the defendant company being that the lands admittedly mineral in character were not known to be mineral until after the date of the filing of the map of definite location at which time its right attached.

On pp. 18 and 19 of their brief, the appellants refer to the case of *Southern Pacific Railroad Company vs. Lane*, (49 App. D. C. 241, 243), which was sustained by the Supreme Court of the United States in *Southern Pacific Railroad Company vs. Fall* (257 U. S. 460-465), and argue that the question before the court there was the same as the question in the case here at bar. A careful examination of the *Southern Pacific* case *supra* will show

that an entirely different question was there submitted to the Court. In that case, after referring to the regulations applied to the selection of *indemnity* lands under railroad land grants requiring that selections (a) be accompanied by specification, tract for tract, of the losses on which they are based, (b) that the selections be made by legal subdivisions, and (c) that, in specifying the losses, minor legal subdivisions be used in entireties and not in fragments, the Court stated, at page 463:

“The last part of the regulation is what is challenged here. As applied and enforced by the land officers, it is not directed against using parts of a minor subdivision as bases for two or more selections where the entire subdivision is used in the same selection list, but only against using it in fragments to sustain distinct selections in different lists.”

In other words the sole question before the court was the denial of the right of the company to specify a portion of a so-called minor legal subdivision of forty acres as a loss in a selection list when the remainder of such forty acres was not specified as a loss in the *same* selection list, and the sole question decided by the court was that the regulation in said subdivision (c) *supra* was within the scope of the power and duty of the Secretary of the Interior. As stated by the learned Justice in the court below (R. p. 40) (after referring to the argument by counsel for the appellants that “a regulation of the Secretary of the Interior, providing that, in the selection of lands under railroad grants, a part only of a minor legal subdivision shall not be assigned unless the rest

of it be also assigned in the same selection list is not an arbitrary abridgment or obstruction of the right of selection", citing the Fall case, *supra*),

"That argument is sound as to lands which the law authorizes the grantees to select to make good 'losses'; that is to say, lands excepted out of the original grant and to which no title is given by the grant. It is not sound as to lands to which the grantee acquired title by an express statutory contract. In other words, the right to acquire title is subject to reasonable regulation by the department, and as lieu selections stand on the same basis as the right to purchase or enter they are subject to reasonable regulation. The curtailment of the right to select for the acquisition of a title is one thing and the curtailment of a title which has vested is something else.

The Secretary's power to supervise does not clothe him with any discretion to enlarge or curtail the rights of the grantee or to substitute his judgment for the will of Congress as manifested in the granting act."

The appellants argue on p. 19 of their brief that the grant to the Central Pacific Railroad Company was made in contemplation of the laws which had long been in force with respect to the disposal and patenting of public lands, and that the act must be construed in harmony with such laws, if such a construction is possible, citing *Cope vs. Cope* (137 U. S., 682, 686) and *Rodgers vs. United States*, (185 U. S., 88).

The case of *Cope vs. Cope*, *supra*, involved the question of the inheritable rights of the children of polygamous marriages under the statutes of Utah and the

acts of Congress, and reiterated the well known principle that repeals and amendments by implication are not favored by the courts, and that no statute will be construed as repealing a prior one unless it is so clearly repugnant thereto as to admit of no other reasonable construction. Substantially, the same principle was announced in *Rodgers vs. United States, supra*, which involved the salary and allowances of officers in the United States Navy. As counsel for the appellee are not claiming that the granting acts of 1862 and 1864, *supra*, either *impliedly* or *otherwise repealed* or *annulled* the prior statutes relating to the survey of the public lands, the applicability of these citations to the case at bar is not apparent. Both the act of July 1, 1862, and the act of July 2, 1864, *supra*, expressly reserved to Congress the right to alter, amend or repeal the same, and counsel for the appellee assert that said acts were amended and modified by the legislation contained in the mining laws of 1866, 1870 and 1872, *supra*, to the extent hereinabove pointed out.

The assumption in the argument on p. 20 of the appellants' brief that legal subdivisions, that is to say, the forty acre subdivisions referred to in the act of 1832, *supra*, only were contemplated as units both of granted and excepted land by said acts of 1862 and 1864, *supra*, and that nothing less than such subdivisions were granted, is not only unsound, but, also, contrary to the admitted practice of the Land Department. If this were so, it would have prevented the application of the mining laws and regulations to the granted lands, and would render null, void and of no effect, patents issued to the company for portions of such so-called legal subdivisions after placer claims had been eliminated therefrom, and, also, portions of

such subdivisions segregated from located lode claims and given lot numbers, a practice which the Department itself admits is both authorized and proper. *United States vs. Central Pacific Railway Company* (49 L. D. 303).

The conclusion based upon this unsound assumption, to-wit, that since less than legal subdivisions were not granted there can be no loss by the practice of the Department complained of in the case at bar, is equally unsound. Counsel for appellee insist that the railway company is *not seeking* "to make a better bargain" through the Land Department or the courts, and as strongly insist that the company should be accorded the rights vested in it under its grant by said acts of 1862 and 1864, *supra*. The company is well aware that the United States, by act of Congress, alone has the power to enlarge the grant, but it does not ask for an enlargement of the grant, either by law or by departmental construction—it does ask and insist that patents be issued to it for *all* of the lands that inured to it under its grant, namely the non-mineral lands which otherwise passed under the grant.

Counsel for appellants, in commenting on the number of cases in which patents were issued containing so-called "split forties", that is tracts less in area than forty acres, (see tabulated lists (R. pp. 25-33), admitted by stipulation (R. p. 24) say "for aught that appears, there may have been segregations by law of the remaining parts of the forties." It is just as fair to assume that placer claims were not concerned in these cases as it is to assume that they were concerned, no probative facts as to either being in the stipulation or forming a part of the record.

Counsel for appellants in their argument with respect

to the "rule of property", on pp. 23-25 of their brief argue that the practice of splitting forty acre subdivisions is only shown to have existed since 1880, whereas appellee insists that the grants to it by the acts of 1862 and 1864, *supra*, were grants *in praesenti*, and that, therefore, the appellee cannot claim the benefit, *as a matter of right*, of a practice which gives it more land than was granted to it. We repeat that the Railway Company is not claiming more land than it is entitled to, and in explanation of the failure to patent lists containing split forties prior to 1880, if that be a fact, (as to which there is no proof in the record), we call attention to the fact hereinbefore stated that, at the date of the passage of the granting acts of 1862 and 1864, *supra*, mineral lands were withheld from all forms of disposition under public land laws, and were not open to the acquisition of title until the passage of said acts of 1866, 1870 and 1872, *supra*, providing for the disposition of mineral lands. At the same time, by far the greater portion of the lands in then known mineral regions were unsurveyed.

By letter dated November 24, 1871, published in Copp's Mining Decisions at p. 297, Commissioner Drummond called the attention of the Secretary of the Interior to the practice prevailing, prior to his assuming office, of allowing pre-emption and railroad rights to *attach* to lands in the mineral region, when the same were returned by the surveyor as agricultural land, without making an investigation as to the correctness of such returns, unless affidavits were filed alleging the tracts to be mineral. After calling attention to several cases, in which by reason of an erroneous return, lands were patented as agricultural, upon which were valuable mining claims, and being impressed

with the erroneous character of such action, he asked for authority to withdraw from disposal as agricultural lands such townships and parts of townships in such mineral regions as might reasonably be presumed from common report, from official and other data, to be properly classed as mineral lands, and that no entries thereof be permitted except by legally qualified citizens holding mineral claims, except in cases where the agricultural character shall first be established by competent testimony in accordance with existing regulations. By his letter dated November 24, 1871 (Copp's Mining Decisions p. 301) the Secretary of the Interior authorized withdrawals as requested, and, thereafter, the Commissioner from time to time withdrew lands in mineral regions from disposal under agricultural laws until the non-mineral character thereof was established in accordance with his circular dated May 6, 1871, *supra*. By such action the burden of proof was thrown upon the agricultural claimant, and this policy was not reversed until by departmental order dated April 22, 1880 (7 C. L. O. 36), these general withdrawals of mineral lands were revoked, a non-mineral affidavit filed by an agricultural claimant was deemed sufficient, and the burden of proof was thrown upon the mineral claimant to prove his allegations. (See case of Nancy Ann Caste [3 L. D. 169, 170]). Since the general withdrawals of mineral lands were not revoked until 1880, it is perfectly apparent why the practice of "splitting forties" is only shown to have begun at that time.

Referring to instances where the District Court rendered judgments in cases involving "split forties", Exhibit "G" (R. 34-35), counsel for appellants say "It has not been shown that the question as to whether

such practice was legal was ever raised or decided by the courts." This criticism of the action of the courts is novel and audacious, to say the least. The exhibit shows that the courts which rendered the decrees were United States District Courts for the States of California and Nevada, recognized as mining States. The judges were presumed to know the law, and if the decrees presented to them for adoption were illegal and contrary to the statutes and decisions of the courts of last resort, it is fair to presume that they would not have signed them. Courts do not render illegal decisions.

The four decisions cited by the court below and referred to on pp. 21 and 22 of appellants' brief, were cited to the court below (R. p. 40) by the writers of this brief merely to show that, in his published decisions, the Secretary had authorized the patenting of so-called "split forties" without questioning the legality of such a practice. As shown by counsel for the appellee, *supra*, this was strictly in accordance with the regulations applying the mining laws to the railroad grant. Counsel for appellants argue that in none of those cases was the question raised as to the legality of the entries or claims by reason of that fact, and that consequently the decisions are no authority for the proposition that the Land Department has approved the practice of breaking down legal subdivisions to suit its convenience. If to do so, however, was illegal and contrary to the so-called long established practice to dispose of lands by legal subdivision, why did not the Secretary himself raise this question? It is the duty of the Secretary to dispose of the public lands according to law, not merely to pass upon the

specific questions raised before him, and it must be assumed that he would not repeatedly authorize the patenting of "split forties", as he has done, unless he were warranted by the law in so doing. He is presumed to know the law and must be governed thereby in disposing of cases brought before him. It is safe to presume therefore, that, until the discovery was made by the present administration of the Department of the Interior, in the practice here complained of, that railroad lands were to be adjudicated in so-called legal subdivisions of forty acres only, previous Secretaries and Commissioners were of the opinion that the mining laws and regulations, authorizing subdivisions less than forty acres in area, applied in the adjustment of the various railroad grants.

Counsel for appellants argue that opposed to the finding of the court below are the published decisions and regulations of the Interior Department, all of which show that the public lands are disposed of by legal subdivisions only, meaning thereby so-called legal subdivisions of forty acres only. This is quite a sweeping statement, unsupported by no citations except the circular of July 9, 1894 (19 L. D., 21), the circular of April 9, 1897 (24 L. D., 321), (as to both of which comment will be made herein later) and the case of James H. Harte (33 L. D., 53). If counsel for appellee were so inclined, they might offer the same exhibit for the purpose of showing that the contrary is the fact, leaving to the court the labor of verifying the same from the fifty published volumes of the Land Decisions.

In addition to the four cases, *supra*, cited by the court below, disproving the statement of appellants that all of the published decisions and regulations of

the Interior Department *show* that public lands are disposed of only by legal subdivisions, counsel for appellee call attention to the case of Laughing Water Placer (34 L. D., 56) decided July 27, 1905, in which the Department held

“The mining laws contemplate that in all cases, *except in instances where impracticable so to do*, placer mining locations must be made in conformity with the system of public land surveys, that is, *rectangular in form*, and of dimensions *corresponding to appropriate legal subdivisions* and with east and west and north and south boundary lines.” (Italics by counsel.)

It will be perceived that in this case the Department recognizes the fact that there are cases where it is impracticable to conform placer claims to the system of public surveys and that the subdivisions prescribed by the placer laws are legal subdivisions. In the case of Snow Flake Fraction Placer (37 L. D., 250) decided November 14, 1908, in discussing the conformity of placer claims to the United States system of public land surveys and the rectangular subdivisions of such surveys, the Department, at p. 253, admits that “placer claims of all shapes and forms were presented and approved for patent. The only restriction seems to have been that the placer location should not exceed the amount of land allowed by law.”

In the case of William J. Harris (45 L. D., 174), decided May 31, 1910, it was held that under the statute and the regulations then in force the *smallest legal subdivision* authorized for placer claims was ten acres, *normally* in square form, but that when such location would include lands which have passed out of

public domain or which are embraced in adjoining mining claims, the claim may be described by *rectangular* ten acre tracts. In this case the tract was described as the $E\frac{1}{2}W\frac{1}{2}E\frac{1}{2}NW\frac{1}{4}$ Sec. 16, (more properly the $E\frac{1}{2}W\frac{1}{2}NE\frac{1}{4}NW\frac{1}{4}$ and $E\frac{1}{2}W\frac{1}{2}SE\frac{1}{4}NW\frac{1}{4}$, Sec. 16), and it was stated that the land immediately west of this location was part of the grant to the State of Idaho in aid of common schools, and that adjoining to the east was embraced in other mining locations. It is interesting to note that this decision recognized ten acres in square form as a legal subdivision, and also recognized the parallelogram form of location of ten acres mentioned in the circulars of August 8, 1870, and May 6, 1871, *supra*.

These are a few of the decisions recognizing subdivisions less in area than the so-called legal subdivisions of forty acres, and doubtless more could be found and cited by a more diligent search. It is apparent that in all of these instances the Department was more intent upon separating the mineral from the agricultural land than in observing the strict letter of the law as interpreted in some of its regulations.

Counsel for the Department officials contend that the placer mining law, permitting the splitting of forties into ten acre tracts, is a special law, not applicable to the adjustment of railroad grants. They admit, however, that it is applicable to railroad grants to the extent that placer claims of less than forty acres in extent can be carved out of railroad granted lands, and that when so carved out, the railroad grantee is entitled to the balance of the forty acres. But we insist that the railroad grantee is entitled to such balance as agricultural land, *by virtue of the grant*, title to the agricultural land within the grant being vested in it,

and *not* by virtue of the carving out of the mineral claim.

Turning now to the citation by counsel for the appellants of the circulars of July 9, 1894, (19 L. D., 21) and April 9, 1897, (24 L. D. 321), it is surprising to note that reliance is placed upon the *exception* to the practice laid down by those circulars, rather than upon the rules and procedure prescribed by said circulars. Both of these circulars provided a practice and procedure whereby railroad companies were required to post and publish its selections of lands in mineral areas, so as to give notice of such selections to the public. The first circular (19 L. D., 21) required that the publication and posting should contain a statement that the railroad company has applied for the lands "*designating the same by townships*", etc. Counsel have entirely omitted (and significantly so) to cite the intervening decision of October 11, 1895 (21 L. D., 381), which amended the circular of July 9, 1894, in the matter advertising the aforesaid lists of lands, by requiring the companies "to describe by sections, *and by portions of sections when less than a section is selected*, in the published notice, instead of townships, the lands covered by their applications for patent, except where the list covers all the odd-numbered sections in a township, in which event the notice can so state." Attention is particularly directed to the use of the words "*portions of sections*." If the Department had meant "legal subdivisions" it would have been a simple matter to use those words; but what other meaning could the words "portions" of sections" have than that areas of forty acres, and also areas *less than forty acres* in extent, such as were then being selected by and patented to railroad companies, could

be included in such lists. The portion of the circular of July 9, 1894, cited on behalf of the appellants is the exception to the requirement of publication and posting whereby posting and publication were not required where lists had been prepared under the former rules, and mineral affidavits had been furnished "for each subdivision of forty acres" (circular of July 9, 1894, *supra*), amended by the circular of April 9, 1897, *supra*, to read "for each and every legal subdivision". It is respectfully insisted, however, that nothing in these excepting provisions prevented the listing of "*portions of sections*," namely area less than forty acres in extent, in accordance with the then well-established and long continued practice of adjusting railroad grants.

Referring to the case of James H. Harte (33 L. D., 53) cited on p. 23 of the brief for appellants, a careful reading of that case will inevitably lead to the conclusion that if all the land owned by a selector was less than a so-called legal subdivision of forty acres, he could relinquish such lesser tract and receive patent for an equal quantity of public land elsewhere. The rule announced in the Harte case is entirely similar to that announced by the Supreme Court of the United States in the case of Southern Pacific R. R. Co. vs. Fall (257 U. S., 460), *supra*, namely, that in specifying losses for an indemnity selection, minor legal subdivisions must be used in their entireties and not in fragments. This, as stated by the learned Justice below, is sound argument as to lands which the law authorizes the grantees to select to make good "losses." "The right to acquire title is subject to reasonable regulation by the Department, and as lieu selections stand on the same basis as the right to purchase or enter they are subject to reasonable regulation. The curtailment of

the right to select for the acquisition of a title is one thing and the curtailment of a title which has vested is something else". (R. p. 40.)

The railroad company is not claiming the benefit of a practice which gives it the benefit of more land than was granted, but since it is clear from the foregoing that forty acre tracts have for years been and can still be split into smaller subdivisions, the Company insists upon its vested rights and no more. The appellee does not ask the Secretary to violate but to observe the law.

THE ASSIGNMENTS OF ERROR and CONCLUSION

Viewed in the light of the foregoing the errors assigned by the appellants are not now so apparent as their counsel in their argument would have this court believe. The first assignment of error of appellants was that the court erred in taking jurisdiction to review the defendants' decision rejecting the plaintiff's selection of the tract of land in controversy. It is true that the appellee admitted the *mineral* character of half of the forty acre subdivision in question, and it is equally true that the appellants admitted the *non-mineral* character of the remaining half of the said forty acre subdivision; but it is not true that it was in accordance with established practice and regulations that appellants held and determined that the entire forty acres were mineral in character, and the appellee insists that, as hereinbefore pointed out, the practice complained of is not only contrary to the terms of the granting acts of 1862 and 1864, *supra*, but also contrary to the practice and regulations existing and established over a long

period of years, and extending down to the time when the decision complained of was rendered; and, if now permitted to stand, will deprive the appellee of a valuable part of its land grant for which the United States has heretofore received a valuable consideration and will continue to do so for the years to come and so long as said railroad continues in operation.

Assignments of error two, three and four allege error in not sustaining appellants' contentions that nothing less than a so-called forty acre legal subdivision is granted to the railroad company unless a lot or fractional subdivision created by survey; that it was error to hold that appellee acquired title to all parts of a section of land not mineral, or sold, reserved or otherwise disposed of by the United States, and as to which no claim of pre-emption or homestead attached at the time of definite location, regardless of lines denoting such so-called legal subdivisions of forty acres established by Government surveys, and that it was error not to hold that the appellants had the power and that it was their duty to refuse to recognize less than said so-called legal subdivisions of forty acres in adjudicating selections of land made by the appellee.

As pointed out by appellee herein, the amendatory act of July 2, 1864, *supra*, provided that in determining what lands were to be excepted as mineral, it should be "such quantity for each settler who claims as a miner, as the Commissioner may establish by general regulation;" that the Commissioner of the General Land Office had failed to establish such regulations, but that Congress provided for the disposition of mineral lands by the acts of 1866, 1870, and 1872, *supra*, under which general regulations were adopted by the Land Department, applicable to mineral lands in

railroad sections as well as outside such sections, which acts and regulations established tracts ten acres in extent as legal subdivisions, and that these laws and regulations were applied to the adjustment of railroad grants for a long period of time, extending down to the time of departure therefrom in the rulings here complained of.

It is expressly admitted by both sides that half of the tract here in controversy is in fact non-mineral in character and half in fact mineral. As stated by the learned Justice below "how then can it be said that the whole tract must be regarded as mineral rather than non-mineral? If it be proper to say that the whole piece is mineral because half of it is mineral, is it not equally correct to say that the whole subdivision is non-mineral because half of it is non-mineral?" (R. pp. 39, 40.)

It must be remembered that the particular tract of land in controversy, consisting of twenty acres, was examined by a mineral inspector of the General Land Office, was specially reported by him to be non-mineral in character, and based on his recommendation, the contest was dismissed as to said tract, and the same was clear listed to the company by the Field Service Division on the mineral question. (R. p. 15). This was admitted in the appellants' answer and is set forth in the appellants' brief at page 6. In the face of a grant vesting in the railway company title to all the non-mineral land in the odd-numbered sections within the grant (with certain exceptions not here pertinent), and in the face of the mineral inspector's report finding the land to be non-mineral in character, the Department now says, in effect, "The land which we find is non-mineral in fact is mineral in law, and

does not pass under the grant". Why? "Simply and only because an adjoining twenty acres, the remainder of the quarter quarter section, is mineral in character, and we have decided that we cannot longer do what we have done for many years, namely, split a forty acre tract." Why the proposition is absurd on its face. If the adjudication that the tract in question is mineral is allowed to stand, it could not be entered by an agricultural entryman; nor would a mineral claimant attempt to enter it, because it is *admittedly* non-mineral. Must it remain forever in suspension? Of course not. Since it is admittedly non-mineral, it inured to the railway company under the grant, and since it passes by virtue of the grant, it needs no carving out of the mineral half of the tract *by a mineral claimant* to give virtue to the title in the company; that can just as well be done by the Department by following the *admitted* procedure and practice of many, many years.

It is unnecessary for counsel for appellee to devote any extended space to explaining how easily these so-called legal subdivisions of forty acres can be subdivided into the smaller ten acre tracts referred to in the mining laws and regulations; that speaks for itself. The Interior Department has for years approved clear lists of such character and it can easily continue to do so. There is no hardship, no technical or administrative difficulty involved.

The fifth assignment of error is in not holding that the suit is one against the United States which in this behalf has not consented to be sued. In support of this assignment, counsel for appellants proceed on the erroneous premise that the object of the suit is to acquire lands in excess of those granted to appellee by said acts of 1862 and 1864, *supra*; that the United

States is the party vitally to be affected, a necessary party to the proceeding, and has not consented to be sued. Counsel for appellee aver that the premise being unsound, the conclusion that this is a suit against the United States is equally erroneous. They reiterate the statement hereinbefore made that the appellee is not seeking to enlarge its grant, is not seeking to acquire lands in excess of the lands granted to it, but is insisting and asking that patents be issued to it passing title to all of the lands that inured to it under its grant.

The appellants having failed to establish the fact that each of its five preceding assignments of error constitute grounds for dismissing the bill, its sixth assignment of error, that the court below erred in not dismissing the bill of complaint, falls of its own weight. Counsel for appellee aver that the court below was fully justified by the law and the facts in sustaining the plaintiff's bill and granting the relief sought.

Counsel for the Secretary and the Commissioner argued in the court below that if a placer mining claimant should locate the admitted mineral portion, twenty acres in extent, of the very forty acre tract here involved, the remaining twenty acres could then be patented to the railroad company. Counsel for the Departmental officials in their brief (pp. 27 and 28) citing the case of *United States vs. Central Pacific Railway Company*, (49 L. D., 303), *supra*, admit that the company may secure title to the remaining portion of the said forty acre subdivision after a *segregation survey* of the mineral lands, citing 2331 R. S., *supra*.

If such action can eventually be taken, after waiting perhaps for years for a mineral claimant to come for-

ward to assert a claim under the mining laws, why can it not be taken now?

If, as admitted, the non-mineral portion of this tract would then belong to the company under its grant, it must be that it inured to it by virtue of the grant, and not by virtue of the action of a mining claimant in defining what portion he claims under the mining laws and regulations.

In a quite recent decision of the Department, dated July 31, 1925, Central Pacific Railway Company (51 L. D., 173, advanced sheets), involving a selection made by the Central Pacific Railway Company under the provisions of the act of June 22, 1874 (18 Stat., 194), it was held that the company was entitled to select an equal quantity of unappropriated, non-mineral lands elsewhere within the limits of the grant in lieu of that relinquished under said act. The Department there quoted with approval from its earlier decision of April 22, 1918 (unreported), involving a selection, Carson City 06752, of the Central Pacific Railway Company under said act of June 22, 1874, *supra*, where, after commenting upon the remedial provisions of said act, it held

“The Central Pacific Railway Company accepted the proposal and is *entitled to select an acre of vacant land within the limits of its grant for each acre awarded to a settler whose claim was not of record when the definite location of the road was fixed.*” (Italics by counsel.)

Of course it should be borne in mind that the act of June 22, 1874, did not grant a general right of indemnity, but only provided, for the benefit of settlers, that

under certain circumstances, a railroad company might take indemnity for lands which by right had inured to it under its grant, but which had inadvertently been patented to settlers.

If this was true with respect to lands to which the company relinquished its claim and title for the benefit of settlers, it would seem that it is equally true with respect to lands entirely free from conflict and which inured to it under its grant.

Counsel for appellee are inclined to take exception to the assertion made by counsel for the appellants that the case of Southern Pacific Railway Company vs. Fall, *supra*, was an attempt to “dictate” the procedure to be followed by the appellants in the conduct of their official duties; there is nothing in the record in said case to warrant such an assertion; and they most emphatically deny that the present case is either an attempt to dictate the procedure to be followed by the Land Department or an attempt to enlarge the grant or acquire lands in excess of the quantity granted to the appellee by the acts of 1862 and 1864, *supra*.

Wherefore, the appellee having shown that the grant of the Central Pacific Railway Company to the land here in question attached long years ago, at the time that the line of its road was definitely fixed; that the said land is admittedly non-mineral in character, and that the long established practice of the Land Department for many years was to patent subdivisions less in area than the so-called legal subdivisions of forty acres until that practice was departed from by the appellants in the decisions herein complained of, it is respectfully submitted that the decision of the learned

court below is correct and should be affirmed and that the appellee should be granted the relief sought in the bill of complaint, and granted by the Court below.

Respectfully submitted,

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